MR. CUNNINGHAM BEFORE?

A. NOTHING MAJOR. LITTLE MINOR ARGUMENTS.

Q. OKAY. AND HOW ABOUT YOUR HUSBAND, CHRISTOPHER KNOX. HAVE THEY HAD ARGUMENTS BEFORE?

A. YES.

MR. LINK: ONE SECOND, YOUR HONOR. NOTHING FURTHER.

THE COURT: ALL RIGHT. MR. GULLEY.

CROSS-EXAMINATION

BY MR. GULLEY:

Q. PRIOR TO THIS INCIDENT, HOW LONG HAD YOU KNOWN MR. CUNNINGHAM?

A. I'M NOT SURE. A COUPLE MONTHS TO A YEAR MAYBE.

Q. OKAY. WHO MOVED INTO THAT APARTMENT COMPLEX FIRST, YOU OR HIM?

A. I DID.

Q. OKAY. AND HE MOVED IN SOME TIME AFTER YOU?

A. YES.

Q. OKAY. THIS NIGHT YOU WERE BEING EVICTED, WAS THAT THE ONLY REASON YOU WERE BEING EVICTED?

A. IT WAS THE LEASE. THEY DIDN'T WANT TO CONTINUE WITH THE LEASE.

Q. WHY IS THAT?

A. I DON'T KNOW.

Q. I'M SORRY?

A. I DON'T KNOW.

Q. THEY DIDN'T TELL YOU WHY THEY DIDN'T WANT TO CONTINUE WITH THE LEASE?

A. MY HUSBAND HAD ALL THE PAPERS ON THAT.

Q. BUT AS FAR AS YOU KNEW, YOU WERE BEING EVICTED BECAUSE YOU GUYS DIDN'T PAY RENT, CORRECT?

A. WELL, RENT, AND WE HAD TOO MANY ROOMMATES.

Q. I'M SORRY?

A. TOO MANY ROOMMATES.

Q. HOW MANY ROOMMATES DID YOU HAVE?

A. WE HAD THREE AT THE TIME.

Q. I'M SORRY?

A. THREE AT THE TIME.

Q. OKAY. AND ONE OF THE THREE BEING MR. CASTRO?

A. YES.

Q. OKAY. WHO WERE THE OTHER TWO?

A. TWO FRIENDS OF OURS.

Q. OKAY. DID -- HOW LONG HAD THEY BEEN LIVING THERE?

A. MAYBE A MONTH OR TWO.

Q. MALES, FEMALES?

A. A HUSBAND AND WIFE.

Q. OKAY.. THEY WERE STAYING IN THE OTHER BEDROOM?

A. YES.

Q. WERE THEY THERE THAT NIGHT?

A. THEY WEREN'T THERE AT THE TIME.

Q. OKAY. SO IT WAS YOU AND YOUR HUSBAND, THIS OTHER MARRIED COUPLE, MR. CASTRO, AND YOUR CHILD, CORRECT?

A. YES.

Q. SO IT IS WAS SIX OF YOU IN THIS TWO BEDROOM, ONE BATH APARTMENT?

A. YES.

Q. SO WHEN MR. CASTRO DESCRIBED THE APARTMENT AS FILTHY, WOULD THAT BE A FAIR DESCRIPTION?
A. IT WASN'T FILTHY. IT'S CLUTTERED, BUT NOT FILTHY.
Q. AND MR. CASTRO WAS THE ONE WHO DID ALL THE CLEANING UP AT THE HOUSE, CORRECT?
MR. LINK: OBJECTION. RELEVANCE.
THE COURT: OVERRULED.
THE WITNESS: MOST OF THE TIME.
BY MR. GULLEY:
Q. NOW, WHEN YOU FIRST MET MR. CUNNINGHAM, DID YOU GUYS GET ALONG, DID YOU FIGHT, OR DO YOU RECALL?
A. WE GOT ALONG, I GUESS.
Q. OKAY. AT SOME POINT, YOU GUYS WERE MORE OR LESS FRIENDS, CORRECT?
A. YES.
Q. WOULD HE OFTEN LEND YOU MONEY?
A. YES.
Q. OKAY. WHAT ABOUT MR. KNOX? WOULD HE LEND MR. KNOX MONEY ALSO?
A. NOT THAT I KNOW OF.
Q. OKAY. WOULD IT BE FAIR TO SAY MR. KNOX WAS NOT VERY HAPPY WITH YOUR FRIENDSHIP WITH MR. CUNNINGHAM?
MR. LINK: OBJECTION. FOUNDATION.
THE COURT: OVERRULED. YOU CAN ANSWER, IF YOU KNOW.
THE WITNESS: PROBABLY NOT.
BY MR. GULLEY:
Q. OKAY. AND THAT'S BECAUSE MR. CUNNINGHAM WAS

LENDING YOU MONEY AND BEING FRIENDLY WITH YOU, CORRECT?

A. CORRECT.

Q. YOU INDICATED THAT THE ONLY DISAGREEMENTS YOU HAD WITH MR. CUNNINGHAM WAS MINOR?

A. YES.

Q. AND CAN YOU TELL US FOR INSTANCE?

A. TELL YOU WHAT?

Q. WHAT TYPE OF DISAGREEMENTS DID YOU HAVE WITH MR. CUNNINGHAM?

A. JUST ARGUMENTS OVER MONEY THAT I OWED HIM.

Q. I'M SORRY?

A. OVER MONEY THAT I OWED HIM.

Q. OKAY. AND HE DEMANDED THE MONEY BACK AND YOU DIDN'T HAVE IT?

A. CORRECT.

Q. ALL RIGHT. DID IT EVER GET TO THE POINT WHERE HE WAS THREATENING YOU?

A. NOT THAT I COULD RECALL.

Q. OKAY. NOW, YOU INDICATED YOU SAW ARGUMENTS BETWEEN YOUR HUSBAND AND MR. CUNNINGHAM?

A. CORRECT.

Q. HOW WOULD YOU DESCRIBE THOSE ARGUMENTS?

A. LOUD.

Q. OKAY. WOULD YOU CALL THEM MAJOR ARGUMENTS?

A. NO, I WOULDN'T CALL IT MAJOR.

Q. AT SOME POINT IN TIME, DID YOU HEAR YOUR HUSBAND THREATEN TO KILL MR. CUNNINGHAM OTHER THAN THAT NIGHT?

A. NO.

Q. OKAY. AT SOME POINT IN TIME, DO YOU REMEMBER YOUR HUSBAND THREATENING TO MR. CUNNINGHAM WITH A BASEBALL BAT OTHER THAN THAT NIGHT?

A. NO.

Q. DID YOU EVER GET INTO FIST AND CUFFS?

A. NO.

Q. OKAY. THEY WOULD JUST YELL BACK AND FORTH AT EACH OTHER?

A. YES.

Q. HOW MANY TIMES DID YOU OBSERVE THIS HAPPEN?

A. A COUPLE TIMES, THREE OR FOUR TIMES.

Q. OKAY. AND THAT'S OVER THAT YEAR PERIOD OF TIME THAT YOU GUYS HAD BEEN KNOWING EACH OTHER?

A. YES.

Q. NOW, THAT NIGHT YOU WERE BEING EVICTED, MR. CUNNINGHAM WAS NOT BEING EVICTED; IS THAT CORRECT?

A. NO.

Q. AND PART OF THE REASON YOU WERE USING HIS VACUUM WAS TO CLEAN UP THE PLACE, CORRECT?

A. CORRECT.

Q. DID YOU ACTUALLY GET THE VACUUM, OR DID MR. CASTRO?

A. I DID.

Q. ALL RIGHT. AND WHEN DID YOU GET THAT VACUUM?

A. A COUPLE OF DAYS TO A WEEK BEFORE.

Q. OKAY. WERE YOU WORKING THAT DAY?

A. NO.

Q. OKAY. AND YOU INDICATED YOU WERE COMING HOME FROM SOMEWHERE; IS THAT CORRECT?

A. YES.
Q. HAD YOU BEEN DRINKING THAT NIGHT?
A. NO.
Q. HAD YOU BEEN USING ANY ILLEGAL DRUGS THAT NIGHT?
A. NO.
Q. HOW ABOUT YOUR HUSBAND?
A. HE MIGHT HAVE BEEN DRINKING. I'M NOT SURE.
Q. WHAT ABOUT USING DRUGS?
A. NO.
Q. OKAY. WHAT TIME DID YOU ACTUALLY GET HOME?
A. I'M NOT SURE. IT WAS 6, 7 O'CLOCK.
Q. OKAY. AND HOW LONG WAS IT BEFORE MR. CUNNINGHAM CAME TO YOUR APARTMENT?
A. WITHIN A FEW MINUTES.
Q. SO ALL THIS -- WITHDRAW THAT.
WITHIN A FEW MINUTES HE CAME TO YOUR APARTMENT, CORRECT?
A. CORRECT.
Q. DID HE COME IN THE APARTMENT?
A. YES.
Q. AND AT THAT TIME, DID HE HAVE THE GUN?
A. YES.
Q. ALL RIGHT. THIS WOULD BE ABOUT 6:30, 7 O'CLOCK?
A. THAT'S WHAT I'M ASSUMING. I'M NOT SURE WHAT TIME IT WAS.
Q. OKAY. NOW, ACCORDING TO YOUR PREVIOUS TESTIMONY, HE CAME IN, HE STARTED ARGUING WITH MR. CASTRO, CORRECT?
A. CORRECT.
Q. AT THIS POINT IN TIME, HE'S NOT POINTING THE GUN AT

MR. CASTRO, CORRECT?

A. NO.

Q. HE'S NOT POINTING IT AT YOU, CORRECT?

A. NO.

Q. HE'S NOT POINTING IT AT YOUR HUSBAND?

A. NO.

Q. YOUR HUSBAND IS STILL IN THE OTHER ROOM, CORRECT?

A. CORRECT.

Q. ALL RIGHT. NOW, ACCORDING TO YOUR TESTIMONY, MR. CASTRO THEN PICKS UP THE PHONE, AND THEN MR. CUNNINGHAM STARTS POINTING THE GUN AT HIM?

A. NO, WHILE THEY WERE ARGUING. BEFORE MR. CASTRO HAD PICKED UP THE PHONE, WHEN HE FIRST WALKED IN THE DOOR, HE WASN'T POINTING IT AT NOBODY. WHEN THEY STARTED ARGUING HE STARTING WAVING IT BACK AND FORTH BETWEEN JOSE AND MYSELF.

Q. SO THIS IS BEFORE YOUR HUSBAND CAME OUT, CORRECT?

A. CORRECT.

Q. ALL RIGHT. AND THEN ONCE YOUR HUSBAND CAME OUT, IS THAT WHEN HE PUT THE GUN TO MR. CASTRO?

A. I'M NOT SURE IF MY HUSBAND WAS STANDING THERE AT THAT POINT OR NOT.

MR. GULLEY: LET ME HAVE A SECOND, PLEASE.

BY MR. GULLEY:

Q. FROM THE TIME HE WALKED INTO YOUR APARTMENT WITH THE GUN UNTIL THE TIME HE LEFT, HOW MUCH TIME WENT BY?

A. IT SEEMED LIKE JUST A COUPLE MINUTES.

Q. OKAY. AND YOU WERE ON THE PHONE CALLING 911 AT THE TIME HE WAS STILL IN THE APARTMENT?

A. MY HUSBAND DID.
Q. OKAY. SO WAS YOUR HUSBAND IN THE LIVING ROOM?
A. HE WAS IN THE HALLWAY.
Q. OKAY. AND CAN YOU SHOW US WHERE THE HALLWAY IS.
A. RIGHT HERE.
Q. USING THE POINTER, YOU POINTED TO THE MIDDLE OF PEOPLE'S EXHIBIT 2, THE ONE THAT SAYS "NOT TO SCALE," CORRECT?
A. YES.
Q. ALL RIGHT. NOW, WHERE WAS MR. CUNNINGHAM -- AND USE THE SAME POINTER. AT THE TIME YOUR HUSBAND WAS ON THE PHONE WITH 911, WHERE WAS MR. CUNNINGHAM?
A. HE WAS RIGHT HERE, IN HERE.
Q. SO WOULD IT BE FAIR TO SAY THE LINE OF SIGHT WAS THEY COULD SEE EACH OTHER?
THE COURT: AND SHE POINTED TO THE BOTTOM MIDDLE PORTION OF THE LIVING ROOM JUST NOW.
BY MR. GULLEY:
Q. SO MR. CUNNINGHAM DID NOT GO TO YOUR HUSBAND AND SAY, "PUT DOWN THAT PHONE. I'M GOING TO BLOW YOUR BRAINS OUT," OR ANYTHING LIKE THAT?
A. HE DID NOT GO TO HIM, NO.
Q. YOUR HUSBAND GOT THE BAT IN ONE HAND, TELEPHONE IN THE OTHER, CORRECT?
A. CORRECT.
Q. ALL RIGHT. AT NO POINT IN TIME DID MR. CUNNINGHAM TELL HIM TO PUT DOWN THAT PHONE, CORRECT?
A. I DON'T RECALL HIM TELLING HIM TO PUT IT DOWN, NO.

Q. DO YOU RECALL MR. CUNNINGHAM GRABBING THE PHONE SAYING HE'S GOING TO CALL 911 TO HAVE THE POLICE COME OUT AND TALK ABOUT THIS INCIDENT?

A. NO.

Q. DO YOU RECALL HIM THROWING SOME CHANGE AT YOU SAYING HE'LL PAY FOR THE PHONE CALL?

A. NO.

Q. OKAY. NOW, ACCORDING TO WHAT YOU TOLD US TODAY THEN, YOUR TESTIMONY TODAY IS THAT MR. CUNNINGHAM PULLED A GUN ON MR. CASTRO PRIOR TO YOUR HUSBAND GETTING THE PHONE, CORRECT?

A. CORRECT.

Q. ALL RIGHT. NOW, THAT NIGHT WHEN YOU WERE ON 911, YOU INDICATED THAT MR. CUNNINGHAM DIDN'T PULL THE GUN OUT UNTIL YOUR HUSBAND WENT TO THE ROOM AND GOT IT BACK?

A. I DON'T RECALL THAT.

Q. YOU HEARD THE TAPE A FEW MINUTES AGO, CORRECT?

A. YES.

Q. I'M SHOWING YOU A TRANSCRIPT FROM THE TAPE. I'M SHOWING YOU PAGE 7 AND 8. WHY DON'T YOU READ THAT TO YOURSELF WHERE IT SAYS, "R." OKAY. AND GO TO THE NEXT ROW, THE NEXT ROW ON THE NEXT PAGE.

OKAY. ALL RIGHT. SO NOW WHAT IS THE SEQUENCE OF EVENTS? DID HE RAISE THE GUN AFTER YOUR HUSBAND WENT AND GOT THE BAT?

A. NO, THAT THERE SAYS THAT IT WAS MY ROOMMATE, CORRECT, THAT MY ROOMMATE WENT TO GRAB FOR THE PHONE. THAT'S WHEN HE PULLED THE GUN ON ME, NOT MY HUSBAND.

Q. OKAY. SO ACCORDING TO YOUR STATEMENT, "WHEN HE PULLED THE GUN OUT, HE PULLED IT ON MY HUSBAND. MY HUSBAND WENT TO THE ROOM AND GOT A BAT.
A. OKAY.
Q. WOULD IT BE FAIR TO SAY THIS WAS PRETTY EXCITING THAT NIGHT, CORRECT?
A. YES.
Q. AND THE SEQUENCE OF EVENTS MAY BE A LITTLE VAGUE IN YOUR MIND?
A. YES.
Q. NOW, YOU SAID MR. CASTRO FELL TO THE FLOOR; IS THAT CORRECT?
A. HE DIDN'T FALL. HE WAS FORCED TO THE FLOOR.
Q. WHEN YOU SAY "FORCED," WHAT DO YOU MEAN BY THAT?
A. BY THE PRESSURE OF THE GUN TO HIS NECK.
Q. IT WAS -- HE WAS ACTUALLY PUSHED ALL THE WAY DOWN TO FLOOR?
A. YES.
Q. THAT SOUNDS LIKE A PRETTY IMPORTANT FACT.
MR. LINK: OBJECTION.
THE COURT: SUSTAINED. THAT STATEMENT IS STRICKEN.
BY MR. GULLEY:
Q. WHEN YOU SPOKE TO THE POLICE, YOU DIDN'T TELL THEM ABOUT HIM BEING PUSHED AND FALLING TO THE FLOOR; IS THAT CORRECT?
A. YES, I DID.
Q. WELL, THE POLICE GAVE YOU AN OPPORTUNITY TO WRITE DOWN WHAT HAPPENED, DIDN'T THEY?

A. YES.
Q. AND DID YOU DO THAT?
A. YES.
Q. DID YOU TRY TO INCLUDE EVERYTHING IMPORTANT?
A. YES.
Q. ALL RIGHT. DID YOU INCLUDE THE FACT THAT HE WAS PUSHED DOWN TO THE FLOOR?
A. I BELIEVE I DID. I'M NOT SURE.
Q. SHOWING YOU --
MR. GULLEY: I'M GOING TO HAVE THIS MARKED AS DEFENSE EXHIBIT A, I GUESS.
(DEFENSE EXHIBIT A, EL CAJON POLICE DEPARTMENT STATEMENT FORM OF REBECCA KNOX, MARKED FOR IDENTIFICATION.)
BY MR. GULLEY:
Q. WHILE THIS IS BEING DONE, DID YOU FEEL THAT JAMES WAS ANYWHERE RESPONSIBLE FOR YOU AND YOUR HUSBAND GETTING KICKED OUT OF THAT APARTMENT COMPLEX?
A. NO.
Q. DID YOU FEEL THAT HE MAY HAVE SAID SOMETHING TO THE APARTMENT MANAGERS OR ANYTHING THAT HELPED YOU GET KICKED OUT?
A. NO.
Q. OKAY. MAYBE THAT HE COMPLAINED ABOUT ALL YOUR ROOMMATES AND THE PEOPLE COMING IN AND OUT OF YOUR APARTMENT?
A. I THOUGHT IT AT ONE POINT, BUT I DIDN'T THINK THAT THAT WAS ANY REASONING.
Q. YOU THOUGHT AT ONE POINT --
A. THAT HE MIGHT HAVE COMPLAINED, BUT --

Q. AND WHY DID YOU THINK THAT?
A. JUST RUMORS.
Q. RUMORS THAT YOU HEARD?
A. YES.
Q. THAT SOMEBODY WAS COMPLAINING ABOUT PEOPLING COMING IN AND OUT OF YOUR APARTMENT?
A. PEOPLE SAYING THAT HE WAS --
MR. LINK: OBJECTION. HEARSAY.
THE COURT: SUSTAINED.
BY MR. GULLEY:
Q. OKAY. WHEN DID YOU THINK THAT?
MR. LINK: OBJECTION. VAGUE. THINK WHAT?
THE COURT: OVERRULED.
THE WITNESS: PREVIOUSLY TO US MOVING OUT.
BY MR. GULLEY:
Q. OKAY. SO AFTER YOU RECEIVED YOUR EVICTION NOTICE, AND PRIOR TO YOU BEING MOVED OUT, YOU FELT -- AT SOME POINT IT CROSSED YOUR MIND THAT JAMES PROBABLY OR MAY HAVE COMPLAINED ABOUT YOU AND THE TRAFFIC IN AND OUT OF YOUR HOUSE, CORRECT?
A. YES.
Q. DID YOU SHARE THIS WITH MR. KNOX?
A. I DON'T REMEMBER.
Q. I'M SHOWING YOU WHAT'S BEEN MARKED AS DEFENSE EXHIBIT A, AND IT APPEARS TO BE A ONE-PAGE STATEMENT WITH "KNOX, REBECCA" ON IT. DO YOU RECOGNIZE THAT?
A. YES.
Q. WHO WROTE THAT?

A. I DID.
Q. THAT'S YOUR HANDWRITING, CORRECT?
A. YES.
Q. AT ANY POINT IN TIME IN THERE, DO YOU SAY THAT MR. CUNNINGHAM SLAMMED YOUR ROOMMATE TO THE FLOOR WITH A GUN?
A. IT DOESN'T SAY TO THE FLOOR, BUT IT DESCRIBES THE SITUATION.
Q. OKAY. WHAT DOES IT SAY THEN?
A. "JAMES PUT THE BARREL OF THE GUN TO JOSE'S NECK AND PUSHED HIM ABOUT 5 FEET INTO THE WALL."
Q. AND THEN WHAT DOES IT SAY?
A. "YELLING THREATS, 'I'M GOING TO KILL YOU. RETURN THE CELL PHONE.'".
Q. OKAY. AND WHERE IS THE PART WHERE HE FELL TO THE FLOOR?
A. IT DOESN'T SAY HE FELL TO THE FLOOR.
Q. YOU DIDN'T PUT THAT IN THERE, DID YOU?
A. NOT IN THOSE WORDS, NO.
Q. WELL, IN WHAT WORDS DID YOU PUT IT IN?
A. THAT HE WAS PUSHED INTO THE WALL.
Q. OKAY. I DON'T WANT TO BE STUPID, BUT THERE'S A WALL AND THERE'S A FLOOR. ARE YOU SAYING THE WALL IS THE FLOOR?
A. NO.
Q. OH, ALL RIGHT. IN YOUR REPORT, SHOW ME WHERE HE FELL TO THE FLOOR AND WHAT YOU WROTE?
A. IT DOESN'T SAY FLOOR.
Q. OKAY. IT NEVER SAYS HE FELL DOWN, DOES IT?

A. HE DIDN'T FALL DOWN.
Q. IT DOESN'T SAY HE WAS PUSHED DOWN, DOES IT?
MR. LINK: OBJECTION. ARGUMENTATIVE.
THE COURT: OVERRULED.
BY MR. GULLEY:
Q. DOES IT SAY THAT?
A. IT SAYS HE WAS PUSHED.
Q. DOES IT SAY HE WAS PUSHED DOWN TO THE FLOOR?
A. NOT IN THOSE WORDS.
MR. LINK: OBJECTION.
THE COURT: OVERRULED.
BY MR. GULLEY:
Q. WHEN HE CAME INTO YOUR APARTMENT, THE DOOR WAS OPEN; IS THAT CORRECT?
A. YES.
Q. WERE YOU GUYS ACTUALLY MOVING, OR WAS IT JUST OPENED?
A. WE WERE ACTUALLY MOVING.
Q. AND DID YOU HAVE LIKE A VAN OR SOMETHING DOWNSTAIRS?
A. MY VAN, YES.
Q. I'M SORRY?
A. MY VAN.
Q. HAD YOUR ROOMMATES ALREADY MOVED OUT?
A. NO.
Q. HAD MR. CASTRO ALREADY MOVED OUT?
A. NO.
Q. SO YOU WERE THE FIRST ONES LEAVING?

A. WE WERE ALL LEAVING AT THE SAME TIME.
Q. BUT YOUR ROOMMATES WEREN'T THERE THAT NIGHT?
A. CORRECT.
Q. AT SOME POINT IN TIME, DID YOU AND MR. CUNNINGHAM GET IN A DISPUTE OVER A CHECK THAT YOU CASHED IN HIS ACCOUNT?
A. NO.
Q. SO THE ONLY DISPUTES YOU GOT IN OVER MONEY WAS ABOUT MONEY HE LENT YOU AND YOU DIDN'T PAY BACK, CORRECT?
A. YES.
Q. DID HE GIVE YOU OTHER THINGS, CHILDREN'S CLOTHES, OR ANYTHING LIKE THAT?
A. I THINK SOME KID'S CLOTHES MAYBE.
Q. AND DID HE EVER HELP YOU GUYS OUT WITH FOOD OR GROCERIES OR ANYTHING TO THAT EFFECT?
A. YES.
Q. ALL RIGHT. SO IT WOULD BE FAIR TO SAY UP TO THAT NIGHT HE WAS A PRETTY DECENT NEIGHBOR WITH YOU, CORRECT?
A. YES.
MR. GULLEY: THANK YOU. NOTHING FURTHER.
THE COURT: ALL RIGHT. MR. LINK.
MR. LINK: BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. LINK:
Q. DEFENSE JUST ENDED UP WITH MR. CUNNINGHAM GAVE YOU SOME THINGS HERE OR THERE, CORRECT?
A. RIGHT.
Q. LOANED YOU SOME MONEY?
A. YES.

Q. SO IT'S FAIR TO SAY YOU WEREN'T MAD AT THE DEFENDANT?

A. NO.

Q. YOU DON'T HAVE A BEEF WITH HIM?

A. NO.

Q. SO YOU'D HAVE NO REASON TO BE UNTRUTHFUL, CORRECT?

MR. GULLEY: OBJECTION.

THE COURT: IT'S LEADING. SUSTAINED. IT'S ALSO ARGUMENTATIVE.

BY MR. LINK:

Q. EVERYTHING YOU SAID HERE TODAY TO THE JURY IS THE TRUTH?

A. YES.

Q. DID THE DEFENDANT EVER POINT THE GUN AT YOU?

A. IT WAS POINTED, YES.

Q. WHEN?

A. THAT EVENING.

Q. AT WHAT POINT, IF YOU CAN REMEMBER?

A. I CAN'T SAY EXACTLY WHAT POINT, JUST IN THE MIDDLE OF THE ARGUING IT WAS BEING POINTED AT ME.

Q. THE GUN WAS POINTED AT YOU?

A. YES.

Q. DID YOU EVER SEE THE GUN POINTED AT YOUR HUSBAND?

A. YES.

Q. DID THE DEFENDANT EVER MAKE THREATS THAT HE WAS GOING TO KILL EVERYBODY IN THE APARTMENT?

A. YES.

MR. GULLEY: OBJECTION. ASKED AND ANSWERED.

THE COURT: OVERRULED.

BY MR. LINK:

Q. GO AHEAD. YOUR ANSWER?

A. YES.

MR. LINK: NOTHING FURTHER.

THE COURT: MR. GULLEY.

RECROSS EXAMINATION

BY MR. GULLEY:

Q. YOU HEARD YOUR HUSBAND SAY TO MR. CUNNINGHAM, "IF YOU EVER COME BACK UP THESE STEPS I'M GOING TO SHOOT YOU IN THE FACE," CORRECT?

A. CORRECT.

Q. DID YOUR HUSBAND HAVE A GUN?

A. NO.

Q. BUT HE HAD THAT BASEBALL BAT?

A. YES.

Q. HE WAS PRETTY ANGRY THAT NIGHT, WASN'T HE?

A. YES.

Q. YOU DON'T LIKE SEEING YOUR HUSBAND THAT ANGRY?

A. YES. CAN YOU REPEAT THAT?

Q. YOU DON'T LIKE SEEING YOUR HUSBAND THAT ANGRY, DO YOU?

A. NO.

Q. WOULD IT BE FAIR TO SAY YOUR HUSBAND HAS A QUICK TEMPER?

A. YEAH.

MR. GULLEY: THANK YOU. NOTHING FURTHER.

THE COURT: MR. LINK?

REDIRECT EXAMINATION

BY MR. LINK:

Q. SOME OF THESE THINGS THAT DEFENSE REFERRED TO AS YOUR HUSBAND SAYING AS, "I'LL SHOOT YOU IN THE FACE IF I EVER SEE YOU AGAIN," WAS THAT AFTER THE DEFENDANT POINTED A GUN AT JOSE CASTRO AND THE TWO OF YOU?

A. YES.

Q. AND YOUR HANDWRITTEN STATEMENT, IT LOOKS LIKE IT APPEARS TO BE ABOUT 12 LINES, THAT'S DEFENSE EXHIBIT A, CORRECT?

A. YES.

Q. SO YOU DIDN'T DETAIL EVERY SINGLE THING THAT HAPPENED, CORRECT?

A. CORRECT.

Q. BUT YOU DID, IN FACT, DETAIL THAT HE PUT THE BARREL OF THE GUN TO JOSE'S NECK AND PUSHED HIM ABOUT 5 FEET INTO THE WALL?

A. YES.

MR. LINK: THANK YOU. NOTHING FURTHER.

THE COURT: MR. GULLEY?

MR. GULLEY: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. MS. KNOX, THANK YOU FOR YOUR TESTIMONY. YOU'RE FREE TO GO AT THIS TIME. HOWEVER, IT IT'S ALWAYS A POSSIBILITY YOU MAY BE RECALLED AS A WITNESS, AND YOU DO REMAIN UNDER SUBPOENA. BUT FOR NOW, YOU'RE FREE TO GO. THANK YOU.

THE COURT: COUNSEL, APPROACH PLEASE.

(SIDEBAR CONFERENCE, NOT REPORTED.)

THE COURT: ALL RIGHT. MR. LINK, YOUR NEXT WITNESS.

MR. LINK: THANK YOU, YOUR HONOR. THE PEOPLE RECALL MR. CASTRO.

THE COURT: OKAY. AND THE COURT WILL GRANT PERMISSION FOR A RECALL OF MR. CASTRO.

JOSE CASTRO

RECALLED AS A WITNESS FOR THE PEOPLE, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

THE COURT: MR. CASTRO, PLEASE RETAKE YOUR SEAT BACK IN THE WITNESS STAND. I TOLD YOU YOU MIGHT BE RECALLED. I DIDN'T KNOW IT WAS GOING TO BE THIS SOON. BUT YOU REMAIN UNDER OATH. PLEASE HAVE A SEAT.

AND, MR. LINK, YOU MAY EXAMINE.

MR. LINK: THANK YOU.

DIRECT EXAMINATION

BY MR. LINK:

Q. THANK YOU FOR COMING BACK. I APOLOGIZE TO LET YOU GO EARLY, BUT WE WERE WAITING FOR SOMETHING HERE.

INTRODUCTORY QUESTION, HAVE I EVER SHOWN YOU ANY GUNS?

A. NO.

Q. SHOWING YOU WHAT'S MARKED AS PEOPLE'S 3 FOR IDENTIFICATION. ONCE AGAIN, I'M HOLDING THREE PIECES OF THE BARREL TOGETHER. DO YOU RECOGNIZE THIS?

A. YES, SIR.

Q. AND HOW DO YOU RECOGNIZE THIS GUN?

A. FROM THE FRONT.

Q. I'M SORRY?

A. FROM THE FRONT.

Q. YOU RECOGNIZE IT FROM THE FRONT?

A. YEAH.

Q. DO YOU RECOGNIZE THIS AS THE GUN THAT WAS PLACED AGAINST YOUR NECK?

A. YES, SIR.

MR. LINK: NOTHING FURTHER.

THE COURT: MR. GULLEY?

MR. GULLEY: NO QUESTIONS.

THE COURT: ALL RIGHT. THANK YOU AGAIN, MR. CASTRO. YOU'RE FREE TO GO. AND ONCE AGAIN, YOU MAY BE RECALLED AGAIN, BUT I DON'T THINK TODAY. SO THANKS AGAIN.

THE WITNESS: THANKS, YOUR HONOR.

THE COURT: I THINK WE'LL TAKE OUR LUNCH RECESS AT THIS TIME, MR. LINK, UNLESS YOU HAVE A WITNESS THAT'S GOING TO BE VERY BRIEF?

MR. LINK: I THINK THIS WOULD BE A GOOD TIME FOR BREAK, YOUR HONOR.

THE COURT: OKAY. LADIES AND GENTLEMEN, WE'RE GOING TO RESUME AT 1:15 TODAY. THAT GIVES US ALMOST AN HOUR AND A HALF FOR LUNCH. PLEASE LEAVE YOUR NOTEBOOKS IN PLACE. PLEASE REMEMBER NOT TO FORM OR EXPRESS ANY OPINIONS ABOUT THIS CASE, DON'T DISCUSS ANY EVIDENCE.

YOU KNOW, IF YOU HAVEN'T TRIED THE CAFETERIA, IT'S NOT A BAD PLACE FOR LUNCH. THEY DO A DECENT JOB. OBVIOUSLY, IF YOU WANT TO LEAVE THE PREMISES, YOU'RE FREE TO DO THAT. I

JUST ASK THAT YOU MAKE ARRANGEMENTS TO MAKE SURE YOU'RE BACK HERE AT 1:15. HAVE A GOOD LUNCH, AND WE'LL SEE YOU THEN.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: I THINK DURING ONE OF YOUR ABSENCES, MR. LINK, MR. GULLEY INDICATED THAT WE WAS GOING TO HAVE HIS WITNESSES SHOW UP TOMORROW MORNING, AND I SAID THAT WOULD BE FINE. IT SOUNDS LIKE YOU STILL GOT SOME MORE WITNESSES TO GO.

MR. LINK: I HAVE ABOUT THREE TO MAYBE FOUR, TWO OF WHICH ARE OFFICERS.

THE COURT: ALL RIGHT. SOUNDS GOOD. WE'LL SEE EVERYONE AT 1:15. IT'S NOT 1:30 TODAY, 1:15, JUST AS A REMINDER.

MR. LINK: THANK YOU, YOUR HONOR. AND, THEN, ALSO FOR THE RECORD, I DON'T THINK I MARKED THE TAPE. SO IF WE CAN JUST MARK THIS AS PEOPLE'S --

THE COURT: IT WILL BE 4, WHICH IS NEXT IN ORDER, I BELIEVE.

MR. LINK: I BELIEVE IT'S 6. THIS WOULD BE 7, ACTUALLY, YOUR HONOR. AT THIS TIME I WOULD LIKE TO MARK THE 911 TAPE AS PEOPLE'S 7.

(PEOPLE'S EXHIBIT 7, TAPE OF 911 CALL, MARKED FOR IDENTIFICATION.)

THE COURT: OKAY.

(AT 11:48 A.M. THE NOON RECESS WAS TAKEN TO RESUME AT 1:15 P.M. OF THE SAME DAY.)

EL CAJON, CALIFORNIA; WEDNESDAY, JANUARY 5, 2005; 1:35 P.M.

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD ON PEOPLE VERSUS CUNNINGHAM. WE HAVE ALL 14 JURORS PRESENT. LADIES AND GENTLEMEN, I KNOW THAT YOU WERE ALL HERE PROMPTLY AT 1:15. I WAS HERE, THE ATTORNEYS WERE HERE, THE DEFENDANT WAS HERE. THE ONLY PERSON WHO WASN'T HERE WAS THE NEXT WITNESS. AND APPARENTLY THAT PERSON IS HERE NOW, AND I APOLOGIZE FOR THE DELAY. THESE THINGS HAPPEN WHEN YOU HAVE LIVE BODIES COMING TO COURT. SOMETIMES THEY'RE LATE. I'LL FIND OUT AFTER HE TESTIFIES WHAT THE SITUATION WAS. BUT WE ARE READY TO GO NOW.

MR. LINK: THANK YOU, YOUR HONOR. THE PEOPLE CALL WILLIAM BLOOMFIELD TO THE STAND.

WILLIAM BLOOMFIELD,

HAVING BEEN FIRST DULY ADMINISTERED AN OATH IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE SECTION 2094, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: MR. BLOOMFIELD, THERE'S ABOUT 20 PEOPLE IN THE COURTROOM THAT NEED TO HEAR EVERYTHING YOU HAVE TO SAY TODAY, SO I'M GOING TO REQUEST THAT YOU SCOOT UP AS CLOSE AS YOU CAN TO GET TO THAT MICROPHONE AS CLOSE AS YOU CAN. SPEAK LOUDLY AND CLEARLY.

MR. LINK, YOU MAY EXAMINE.

MR. LINK: THANK YOU.

//

//

DIRECT EXAMINATION

BY MR. LINK:

Q. WOULD YOU PLEASE STATE AND SPELL YOUR NAME FOR THE RECORD?

A. MY NAME IS WILLIAM LORENZO BLOOMFIELD, W-I-L-L-I-A-M L-O-R-E-N-Z-O B-L-O-O-M-F-I-E-L-D.

Q. THANK YOU. I WANT TO TALK ABOUT AM INCIDENT THAT TOOK PLACE BACK IN SEPTEMBER OF LAST YEAR, SEPTEMBER 12TH. WHERE WERE YOU WORKING IN SEPTEMBER?

A. I WAS WORKING AT 545 NORTH MOLLISON, BUENA VISTA.

Q. IS THAT AN APARTMENT COMPLEX?

A. IT'S AN APARTMENT COMPLEX.

Q. WHAT WAS YOUR JOB?

A. SECURITY OFFICER.

Q. HOW LONG HAD YOU BEEN WORKING THERE?

A. I'VE BEEN WORKING THERE SINCE JUNE.

Q. SIR, DID SOMETHING UNUSUAL HAPPEN THE NIGHT OF SEPTEMBER 12TH?

A. YES, SIR.

Q. COULD YOU PLEASE TELL THE JURY WHAT HAPPENED.

A. I WAS DOING PATROLLING DUTY ON THE COMPLEX THAT NIGHT, AND I WAS WALKING TOWARDS THE MAIN ENTRANCE GATE WHEN I HEARD SOME PEOPLE START SCREAMING THAT, "HE HAS A GUN. HE HAS A GUN."

Q. OKAY. LET ME STOP YOU THERE. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS PEOPLE'S 1 FOR IDENTIFICATION. REFERRING SPECIFICALLY TO PICTURES A, B AND C. DO YOU RECOGNIZE THOSE?

A. YES.
Q. AND WHAT ARE THEY?
A. THOSE ARE THE BUILDINGS ON THE COMPLEX.
Q. AND THAT'S THE COMPLEX THAT YOU WORKED AT IN THE MONTH OF SEPTEMBER?
A. YES, SIR.
Q. AND YOU SAY THOSE TOP THREE PICTURES ARE A FAIR AND ACCURATE REPRESENTATION OF THAT APARTMENT COMPLEX?
A. YES, SIR.
Q. OKAY. NOW, YOU SAID YOU WERE WALKING TOWARDS THE ENTRANCE?
A. YES, SIR.
Q. OKAY. CAN YOU POINT THAT OUT WITH THE POINTER IF YOU SEE IT. THERE'S A POINTER RIGHT IN FRONT OF YOU.
A. WE WAS WALKING FROM THIS WAY.
Q. OKAY. THAT'S WHEN YOU HEARD PEOPLE SCREAMING?
A. YES, SIR.
Q. THEY WERE SAYING WHAT?
A. "HE HAS A GUN. HE HAS A GUN."
Q. WHAT DID YOU DO?
A. I STARTED WALKING TOWARDS THE AREA TO SEE WHAT WAS GOING ON.
Q. OKAY. WHAT HAPPENED?
A. AND THEN I SAW A GENTLEMEN COMING DOWN THE STAIRS WITH A SHOTGUN HOLDING IT IN HIS ARMS.
Q. OKAY. DO YOU SEE HIM HERE IN THE COURTROOM TODAY?
A. YES, SIR.
Q. COULD YOU PLEASE POINT TO WHERE HE'S SITTING AND

IDENTIFY AN ARTICLE OF CLOTHING THAT HE'S WEARING.

A. THE DEFENDANT IN THE BLUE SHIRT.

MR. LINK: IDENTIFYING THE DEFENDANT, YOUR HONOR?

THE COURT: YES.

MR. LINK: THANK YOU.

BY MR. LINK:

Q. AND WHERE WAS IT WHEN YOU FIRST SAW THE DEFENDANT?

A. HE WAS ON THE STAIRWAY COMING DOWN THE STAIRS.

Q. COULD YOU PLEASE POINT WITH THE POINTER.

MR. LINK: OKAY. FOR THE RECORD, HE'S INDICATED ABOUT MIDWAY ON THE STAIRCASE.

THE WITNESS: YES.

BY MR. LINK:

Q. AND IS THAT WHERE YOU SAW HIM ABOUT MIDWAY ON THE STAIRCASE?

A. YES, SIR.

Q. AND HE HAD A SHOTGUN YOU SAID?

A. YES, SIR.

Q. WHERE WAS HE HOLDING IT?

A. HE WAS HOLDING IT BY HIS SIDE LIKE THIS.

Q. OKAY. COULD YOU STAND UP. I CAN'T SEE YOU.

A. YES. HE WAS HOLDING IT BY HIS SIDE JUST LIKE THIS RIGHT HERE.

MR. LINK: AND PLEASE SIT BACK DOWN. FOR THE RECORD, YOUR HONOR, THE WITNESS STOOD UP, HELD HIS RIGHT ARM FULL LENGTH DOWN HIS RIGHT-HAND SIDE LOOKING LIKE HE WAS HOLDING SOMETHING.

//

BY MR. LINK:

Q. WHEN YOU SAW THE DEFENDANT COMING DOWN WITH A GUN, WHAT DID YOU DO?

A. I WALKED TOWARDS THAT AREA, BUT I STAYED BEHIND SOME CARS ON THE NEXT SIDE OF THE PARKING LOT. I TAKE OFF MY CELL PHONE AND CALL MY DISPATCH TO CALL THE EL CAJON POLICE.

Q. WHY DID YOU DO THAT?

A. THE REASON WHY I DO THAT I SAW THAT HE HAS A GUN, AND I DIDN'T WANT, LIKE, TO CONFRONT HIM MYSELF AND ENDANGER MY LIFE OR ANYBODY'S LIFE, SO I CALLED THE POLICE FOR ASSISTANCE.

Q. HOW FAR AWAY FROM THE DEFENDANT WERE YOU WHEN YOU SAW HIM WITH THE GUN?

A. I WAS LIKE ABOUT A CHAIN.

Q. I'M SORRY?

A. ABOUT A CHAIN AWAY FROM HIM BECAUSE IT WAS JUST LIKE THE DRIVEWAY, AND I WAS ON THE NEXT SIDE OF THE DRIVEWAY. SO HE WAS ON ONE SIDE OF THE DRIVEWAY, AND I WAS ON THE NEXT SIDE.

Q. OKAY. CAN YOU POINT TO SOMEWHERE IN THE COURTROOM TO SHOW THE JURY HOW FAR AWAY HE WAS FROM YOU. POINT TO ANY OBJECT, OR PERSON, OR --

A. I WAS MAYBE ABOUT HERE, AND HE WAS MAYBE ABOUT A LITTLE BIT BEHIND FROM WHERE THE OFFICE IS.

Q. A LITTLE BEHIND THE OFFICE THAT WAY, CORRECT?

A. YEAH.

Q. HOLD ON ONE SECOND, PLEASE.

THE COURT: THAT'S GOING TO BE ABOUT 25 FEET.

BY MR. LINK:

Q. OKAY. SO 25 PLUS FEET. DOES THAT SOUND ABOUT RIGHT?

A. THAT SOUNDS ABOUT RIGHT, SIR.

Q. COULD YOU SEE THE DEFENDANT CLEARLY?

A. YES, SIR, BECAUSE THE PLACE WAS LIGHTED.

Q. AFTER YOU CALLED 911 AND YOU TOLD THE 911 OPERATOR WHAT WAS GOING ON, WHAT DID YOU DO NEXT?

A. I MAKE SURE THAT I KEEP MYSELF COVERED BEHIND THE CAR, AND I WAS WATCHING HIM GOING TOWARDS HIS CAR.

Q. DO YOU REMEMBER WHAT KIND OF CAR THAT WAS?

A. I THOUGHT IT WAS A PICKUP TRUCK LIKE TOYOTA TACOMA, ONE OF THOSE CARS.

Q. OKAY. AND DO YOU REMEMBER THE COLOR?

A. YES, IT WAS LIKE BLACK, THE ONE THAT SHOWS AT NIGHT.

Q. I'M SORRY?

A. THAT'S THE COLOR I SEE AT THE TIME.

Q. OKAY. YOU'RE HIDING BEHIND A CAR, AND YOU SEE THE DEFENDANT GO TOWARDS HIS CAR?

A. YES, SIR.

Q. WHAT HAPPENED NEXT?

A. HE PUT IN HIS SHOTGUN FIRST, AND THEN HE OPENED -- HE OPENED HIS DOOR. HE PUT THE SHOTGUN IN THE CAR, AND HE TURNED AROUND AND SAYS TO THE PEOPLE -- I DON'T KNOW WHO HE WAS TALKING TO PERSONALLY -- BUT HE SAYS, "IT'S NOT OVER. I'LL BE COMING BACK FOR YOU GUYS."

Q. WHAT DID HE DO NEXT, THE DEFENDANT?

A. HE GOT IN THE CAR AND DROVE AWAY.
Q. IS THAT THE LAST YOU SAW OF HIM?
A. YES, SIR.
Q. SIR, HAVE I SHOWN YOU ANY REPORTS THAT THE POLICE TOOK OF YOUR STATEMENT?
A. DID I?
Q. HAVE I EVER SHOWN YOU ANY REPORTS?
A. NO, SIR.
MR. LINK: NOTHING FURTHER.
THE COURT: MR. GULLEY.

CROSS-EXAMINATION

BY MR. GULLEY:
Q. GOOD AFTERNOON, SIR.
A. GOOD AFTERNOON, SIR.
Q. THAT'S A NICE ACCENT. WHERE ARE YOU FROM?
A. I'M JAMAICAN.
Q. OKAY. HOW LONG HAVE YOU WORKED AS A SECURITY GUARD?
A. FOR OVER 18 YEARS.
Q. 18 YEARS?
A. YES, SIR. I WORK HERE.
Q. I'M SORRY?
A. I WORK LIKE 12 YEARS IN JAMAICA FOR SECURITY. I WORK HERE FOR 6 YEARS AS SECURITY.
Q. NOW, ARE YOU NEW TO THIS COMPANY OR JUST NEW TO THIS AREA, THE AREA YOU WERE WORKING THAT NIGHT?
A. YES, I'M NEW TO THE COMPANY BECAUSE I'M JUST WORKING WITH THEM FOR 6 MONTHS NOW.

Q. OKAY. ARE YOU AN ARMED SECURITY GUARD?
A. YES, SIR.
Q. WERE YOU ARMED THAT EVENING?
A. YES, SIR.
Q. AND I TAKE IT THERE'S A FULL-TIME SECURITY GUARD STAFF IN THE AREA AT THIS APARTMENT COMPLEX?
A. I DIDN'T GET IT CLEARLY. COULD YOU REPEAT THE QUESTION?
Q. YEAH, I PHRASED THAT BADLY. THIS APARTMENT COMPLEX, IT KEEPS AN ARMED SECURITY GUARD ON PREMISES?
A. NO, SIR. WE WORK FROM 6 P.M. UNTIL 2 A.M. IN THE MORNING.
Q. OKAY. IS THAT BECAUSE THERE'S PROBLEMS THERE AROUND THAT TIME THEY WANT YOU TO WATCH OUT FOR?
A. QUITE LIKELY.
Q. SO THERE HAVE BEEN INCIDENTS AT THIS APARTMENT COMPLEX, CORRECT, TO YOUR KNOWLEDGE?
MR. LINK: OBJECTION. VAGUE.
THE COURT: SUSTAINED.
BY MR. GULLEY:
Q. HAVE YOU HAD TO GET INVOLVED IN ANY OTHER INCIDENTS THAT THIS APARTMENT COMPLEX WHILE YOU WERE THERE?
A. NO, SIR.
Q. SO THIS WAS THE FIRST TIME YOU GOT INVOLVED IN SOMETHING LIKE THIS, CORRECT?
A. YES, SIR.
Q. NOW, PRIOR TO THAT EVENING, HAD YOU MET MR. CUNNINGHAM BEFORE?

A. I'VE SEEN HIM BEFORE.

Q. OKAY. DID YOU HAVE ANY PROBLEMS WITH MR. CUNNINGHAM?

A. NO, SIR.

Q. OKAY. DID YOU SPEAK TO HIM?

A. YES, SIR.

Q. OKAY. WAS IT LIKE "HI," "BYE," THINGS LIKE THAT?

A. YES.

Q. OKAY. AND HE NEVER CAUSED YOU ANY TROUBLE?

A. NO, SIR.

Q. NOW, WHAT ABOUT THE PEOPLE IN APARTMENT UNIT 4, HAD YOU EVER SPOKEN TO THEM BEFORE PRIOR TO THAT EVENING?

A. NO, SIR.

Q. NOW, OTHER THAN YOURSELF, DO YOU KNOW ANY OF THE OTHER OFFICERS WHO PATROL THIS AREA?

A. THAT WORK FOR MY COMPANY?

Q. YES, SIR.

A. YES, SIR.

Q. OKAY. IS ONE OF THOSE OFFICERS A YOUNG LADY BY THE NAME OF SHERRY ROBBINS?

A. YES, SIR.

Q. DO YOU KNOW MS. ROBBINS?

A. YES, SIR.

Q. IS SHE A GOOD SECURITY GUARD?

MR. LINK: OBJECTION. RELEVANCE.

THE COURT: SUSTAINED.

BY MR. GULLEY:

Q. ALL RIGHT. SO THAT EVENING YOU'RE PATROLLING, YOU

HEAR SOME NOISES FROM APARTMENT 4; IS THAT CORRECT?
A. YES, SIR.
Q. THE UPSTAIRS UNIT?
A. YES, SIR.
Q. NOW, PRIOR TO GOING OVER THERE, HAD YOU SPOKEN TO MR. CUNNINGHAM THAT NIGHT?
A. I PROBABLY HAD SAW HIM THAT NIGHT.
Q. OKAY. DO YOU RECALL HIM ASKING YOU STUFF ABOUT WHAT TIME THE LAUNDRY ROOMS ARE GOING TO CLOSE OR SOMETHING TO THAT EFFECT?
A. YES, SIR.
Q. DO YOU REMEMBER WHAT TIME THAT WAS?
A. THAT WAS LIKE ABOUT 9:45.
Q. OKAY. WHAT KIND OF MOOD DID HE APPEAR TO BE IN AT THAT TIME?
A. WHAT?
Q. WHAT KIND OF MOOD WAS HE IN? WAS HE ANGRY, WAS HE LAUGHING, DO YOU REMEMBER?
A. NO, HE WAS STILL QUITE OKAY AT THAT TIME.
Q. OKAY. AND THIS WAS AT, I THINK YOU SAID, 9:45 --
A. CORRECT.
Q. -- AT NIGHT? AND YOU HAD A CONVERSATION WITH HIM ABOUT THE LAUNDRY ROOM, CORRECT?
A. YES, SIR.
Q. NOW, THE NEXT TIME YOU SEE HIM THAT NIGHT IS WHEN YOU SEE HIM COMING DOWN THE STEPS?
A. YES, SIR.
Q. ALL RIGHT. WAS HE SAYING ANYTHING WHEN HE WAS

COMING DOWN THE STEPS?

A. I DIDN'T HEAR WHAT HE WAS SAYING CLEARLY WHEN HE WAS -- I KNOW HE WAS LIKE SAYING THINGS, BUT I DID NOT HEAR CLEARLY WHAT HE WAS SAYING AT THE TIME. BUT WHEN HE CAME TOWARDS HIS TRUCK, I COULD HEAR WHAT HE SAYS.

Q. OKAY. NOW, AS HE'S COMING DOWN THE STEPS, IS THERE SOMEBODY UP AT THE TOP SAYING SOMETHING BACK TO HIM?

A. I'M NOT SURE, SIR.

Q. OKAY. DO YOU RECALL SEEING MR. KNOX OR ANOTHER AFRICAN-AMERICAN MALE AT THE TOP OF THE STEPS YELLING SOMETHING DOWN?

A. YES, SIR.

Q. OKAY. AND THAT WAS AT THE TIME HE WAS WALKING DOWN, MR. CUNNINGHAM WAS WALKING DOWN THE STEPS, CORRECT?

A. YES, SIR.

Q. COULD YOU SEE ANYTHING IN THAT OTHER PERSONS HAND?

A. NO, SIR.

Q. ALL RIGHT. YOUR ATTENTION WAS BASICALLY FOCUSED ON MR. CUNNINGHAM, CORRECT?

A. YES, SIR.

Q. BECAUSE HE HAD THE GUN?

A. HE HAS A GUN.

Q. ALL RIGHT. NOW, WHEN YOU SAW HIM WITH THIS GUN, DID YOU EVER SEE HIM TURN AROUND AND POINT IT UP THE STEPS?

A. NO.

Q. OKAY. DID IT EVER LEAVE HIS SIDE WHILE YOU SAW IT?

A. THE ONLY TIME IT WOULD LEAVE HIS SIDE IS WHEN HE PUT IT BACK IN THE TRUCK.

Q. OKAY. NOW, YOU KIND OF DEMONSTRATED HOW YOU SAW HIM WITH THE GUN. AND YOU'RE FAMILIAR WITH THE SHOTGUN, CORRECT, OR THE GUN YOU SAW, CORRECT?

A. YES.

Q. LET'S SAY THIS IS THE TRIGGER END AND THIS IS THE BARREL. ASSUMING THIS WAS THE GUN, SHOW US HOW HE WAS WALKING WITH THE GUN. YOU CAN STAND UP. THAT'S FINE.

A. YOU SAID THIS IS THE TRIGGER END?

Q. YES.

A. HE WAS HOLDING IT THIS WAY.

Q. OKAY. IT WAS BY HIS SIDE?

A. YES.

Q. AND HE KEPT IT BY HIS SIDE FROM THE MOMENT HE WALKED DOWN THE STEPS ALL THE WAY THROUGH THE PARKING LOT TO HIS TRUCK, CORRECT?

A. YES.

Q. AT NO POINT DID YOU EVER SEE HIM TURN AROUND AND POINT IT BACK UPSTAIRS, CORRECT?

A. NO.

Q. AND AT NO POINT DID YOU EVER SEE HIM THREATEN ANYBODY WITH THE GUN, CORRECT?

A. YEAH.

Q. OKAY. DID YOU EVER SEE HIM POINT THE GUN AT ANYBODY?

A. I DID NOT SEE HIM POINT THE GUN AT ANYBODY WHEN HE WAS COMING DOWN THE STAIRS.

Q. OKAY. NOW, WHEN HE WAS WALKING, WAS HE WALKING FAST, WAS HE WALKING -- WAS HE WALKING FAST, WAS HE WALKING

SLOW, DO YOU RECALL?

A. HE WAS COMING DOWN SLOWLY.

Q. OKAY. AND GOING TO HIS CAR, WAS HE WALKING FAST OR WAS HE WALKING SLOW?

A. HE WAS STILL WALKING SLOW.

Q. OKAY. SO IT DIDN'T APPEAR LIKE HE WAS RUNNING FROM ANYONE. HE JUST WALKED SLOWLY TOWARDS HIS CAR, AND YOU COULD HEAR HIS SCREAMING AND HOLLERING GOING BACK AND FORTH, CORRECT?

A. YES.

Q. YOU COULD HEAR IT COMING FROM BOTH WAYS FROM HIM AND FROM THE PERSON UPSTAIRS?

A. I HEARD PEOPLE SCREAMING.

Q. OKAY. AS HE WAS WALKING TOWARDS HIS TRUCK --

A. YES.

Q. -- AT ANY POINT IN TIME -- EXCUSE ME -- DID YOU EVER SEE HIM STOP BY A VAN AND POINT THE GUN AT A VAN?

A. REPEAT THE QUESTION, SIR?

Q. YEAH. WHILE HE WAS IN THE PARKING LOT, DID YOU EVER SEE HIM STOP AND TAKE THE SHOTGUN AND POINT IT AT A VAN THAT WAS PARKED THERE?

A. NO, SIR, I DID NOT SEE THAT.

Q. AND IT WOULD BE FAIR TO SAY YOU WERE WATCHING HIM CONTINUOUSLY FROM THE TIME HE WALKED DOWN THE STEPS TO THE TIME HE GOT TO HIS VEHICLE, CORRECT?

A. YES, SIR.

Q. AND AT NO POINT IN TIME DID HE EVER THREATEN YOU IN ANY TYPE OF WAY, CORRECT?

A. NO, BECAUSE I DID NOT SPEAK TO HIM.

Q. AND PRIOR TO THAT EVENING, HE HAD NEVER SPOKEN TO YOU, CORRECT?

A. NO, SIR.

Q. AND YOU NEVER HAD A PROBLEM WITH HIM, CORRECT?

A. NO, SIR.

Q. AND YOU NEVER OBSERVED HIM HAVING A PROBLEM WITH ANYONE ELSE, CORRECT?

A. NO, SIR.

MR. GULLEY: THANK YOU. I HAVE NOTHING FURTHER.

THE COURT: ALL RIGHT.

REDIRECT EXAMINATION

BY MR. LINK:

Q. IF I SHOWED YOU A GUN, DO YOU THINK YOU'D BE ABLE TO -- EXCUSE ME -- WITHDRAW IT. IT WAS A POOR QUESTION.

WOULD YOU BE ABLE TO IDENTIFY THE GUN IF IT WAS SHOWN TO YOU?

A. THE GUN IN QUESTION?

Q. YES. IS IT POSSIBLE?

A. IT'S PROBABLY POSSIBLE.

Q. OKAY.

MR. LINK: I'M GOING TO DO THE LITTLE GUN THING AT THIS TIME.

MR. GULLEY: YOUR HONOR, I'M GOING TO OBJECT AT THIS TIME.

THE COURT: HOLD ON.

BY MR. LINK:

Q. I'M NOW SHOWING YOU WHAT'S BEEN MARKED PEOPLE'S 3

FOR IDENTIFICATION. DO YOU RECOGNIZE THIS?

A. YES, SIR.

Q. AND WHAT DO YOU RECOGNIZE THIS AS?

A. AS A SHOTGUN.

Q. AS A SHOTGUN. THE ONE USED THAT NIGHT?

A. YES.

Q. AND I SAY USED, I APOLOGIZE. I MEAN THE ONE THAT THE DEFENDANT WAS HOLDING THAT NIGHT?

A. YES, SIR.

Q. THAT WAS BEING HELD AT HIS SIDE?

A. YES, SIR.

MR. LINK: NOTHING FURTHER.

THE COURT: MR. GULLEY?

RECROSS EXAMINATION

BY MR. GULLEY:

Q. I'M SORRY, SIR. BUT YOU TOLD US YOU WERE ABOUT 25 FEET AWAY?

A. YES, SIR.

Q. HOW DO YOU RECOGNIZE THIS AS THAT PARTICULAR GUN, OR ARE YOU SAYING THIS LOOKS LIKE THE GUN YOU SAW?

A. THERE WAS ENOUGH LIGHT IN THE AREA WHERE HE WAS. THE COMPLEX IS LIGHTED, SO I COULD SEE THE GUN CLEARLY.

Q. OKAY. SO YOU'RE POSITIVE THAT'S THE SAME ONE YOU SAW?

A. YES, SIR.

Q. AND YOU DIDN'T GET ANY CLOSER THAN THIS 25 FEET?

A. ABOUT THAT. OR IT COULD BE -- YEAH.

MR. GULLEY: THANK YOU. NOTHING FURTHER.

MR. LINK: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU, MR. BLOOMFIELD. YOU'RE EXCUSED FOR NOW FOR THE MOMENT. BUT IT'S ALWAYS POSSIBLE YOU COULD BE RECALLED AS A WITNESS, SO YOU REMAIN UNDER SUBPOENA. I'M GOING TO REQUEST THAT YOU REMAIN OUTSIDE UNTIL OUR NEXT BREAK, IF YOU WOULD, JUST OUT ON THE BENCH. AND DON'T TALK TO ANYBODY ABOUT YOUR TESTIMONY.

THE WITNESS: YES.

THE COURT: ALL RIGHT. THANK YOU, SIR. NEXT WITNESS, MR. LINK.

MR. LINK: THANK YOU, YOUR HONOR. PEOPLE CALL OFFICER PAZ TO THE STAND.

STEPHEN PAZ,

HAVING BEEN FIRST DULY ADMINISTERED AN OATH IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE SECTION 2094, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: MR. LINK, YOU MAY PROCEED.

MR. LINK: THANK YOU.

DIRECT EXAMINATION

BY MR. LINK:

Q. SIR, COULD YOU PLEASE STATE AND SPELL YOUR NAME FOR THE RECORD.

A. STEPHEN PAZ, S-T-E-P-H-E-N P AZ.

Q. WHAT'S YOUR OCCUPATION?

A. POLICE OFFICER WITH THE CITY OF EL CAJON.

Q. HOW LONG HAVE YOU BEEN A POLICE OFFICER?

A. JUST ABOUT 2 AND A HALF YEARS.
Q. 3 AND A HALF?
A. JUST ABOUT 2 AND A HALF.
Q. SIR, I WANT TO ASK YOU SOME QUESTIONS ABOUT SEPTEMBER 12TH, 2004. WERE YOU WORKING THAT EVENING?
A. YES, SIR.
Q. AND WERE YOU IN A MARKED PATROL CAR?
A. YES, I WAS.
Q. AND WERE YOU IN UNIFORM?
A. YES, I WAS.
Q. AND AROUND 10 OR 11 IN THE EVENING, DID YOU RECEIVE A CALL?
A. YES. I PERSONALLY DID NOT RECEIVE THE CALL, BUT I HEARD IT COME OVER THE AIR.
Q. WHAT CAME OVER THE AIR?
A. THAT THERE WAS SOME SORT OF A DISTURBANCE WITH A MAN WITH A SHOTGUN AT 545 NORTH MOLLISON.
Q. OKAY. DID YOU GET A DESCRIPTION OF THE PERSON?
A. YES, I DID.
Q. AND WHAT WAS THAT DESCRIPTION?
A. THE DESCRIPTION WAS A BLACK MALE WEARING A HAWAIIAN-TYPE SHIRT WITH A HAT DRIVING OUT OF -- OR ACTUALLY LEAVING IN A BLACK TACOMA PICKUP TRUCK.
Q. AND WHERE WAS YOUR CAR POSITIONED WHEN THAT WENT OVER THE RADIO?
A. ACTUALLY, WHEN I INITIALLY HEARD THE CALL, I WAS IN THE 900 BLOCK OF BROADWAY.
Q. AND WHAT HAPPENED?

A. I STARTED RESPONDING TO THAT LOCATION. I KNEW THAT THEY PROBABLY NEEDED ADDITIONAL OFFICERS.
Q. AND HOW FAR AWAY WERE YOU WERE FROM THAT LOCATION?
A. ACTUALLY, IT'S PROBABLY ABOUT THREE QUARTERS OF A MILE.
Q. OKAY. WHAT HAPPENED?
A. AS I WAS WAITING AT A STOP LIGHT DIRECTLY UNDER THE i-8 BRIDGE, WHICH IS ABOUT THE 600 BLOCK OF NORTH MOLLISON, I OBSERVED THAT VEHICLE PASSING ME DRIVING NORTHBOUND.
Q. WHAT VEHICLE?
A. ACTUALLY, IT WASN'T A TOYOTA. IT WAS A NISSAN, BLACK IN COLOR, THOUGH.
Q. COULD YOU SEE THE PERSON INSIDE?
A. CLEARLY.
Q. WHAT DID THEY APPEAR TO LOOK LIKE?
A. BLACK MALE WEARING A BLUISH WITH WHITE KIND OF STRIPING HAWAIIAN-TYPE SHIRT WEARING A HAT.
Q. SO WHAT DID YOU DO?
A. IMMEDIATELY DID A U-TURN.
Q. AND WHAT DID YOU SEE THIS PERSON'S CAR DOING?
A. AS IT WAS GETTING ONTO THE FREEWAY, IT RAN A RED LIGHT TO GET ONTO THE FREEWAY. I PROCEEDED TO FOLLOW IT, AS WAS SERGEANT ZMIJEWSKI WHO WAS IN THE CAR IN FRONT OF ME. AS WE WERE GETTING ONTO THE FREEWAY, SOMETHING WAS DISCHARGED OUT THE PASSENGER WINDOW ONTO THE SHOULDER OF THE ONRAMP.
Q. OKAY. AND LET ME BACK YOU UP A LITTLE BIT. WHEN YOU FIRST SAW THIS PERSON, YOU COULD ACTUALLY SEE THEIR FACE?
A. YOU COULD SEE A SILHOUETTE MORE THAN ANYTHING. I

WOULDN'T SAY I COULD VISUALLY SEE HIS FACE, BUT A SILHOUETTE.

Q. OKAY. THIS PERSON IN THE BLACK TRUCK RAN A RED LIGHT, CORRECT?

A. CORRECT.

Q. NOW, WE HAVE THE TRUCK -- OFFICER --

A. ZMIJEWSKI.

Q. ZMIJEWSKI.

A. SERGEANT ZMIJEWSKI.

Q. I APOLOGIZE IF I SLAUGHTERED THAT. AND THEN YOU, CORRECT?

A. CORRECT. HE WAS IN THE NUMBER 1 LANE. I WAS IN THE NUMBER 2 LANE SIDE BY SIDE.

Q. OKAY. WHAT HAPPENED NEXT?

A. WE BOTH ACTIVATED OUR OVERHEAD RED LIGHTS, DID A U-TURN. HE WENT FIRST. I FOLLOWED BECAUSE I HAD TO WAIT UNTIL HE GOT OUT OF THE WAY, AND THEN PROCEEDED ON THE FREEWAY.

Q. YOU SAID YOU SAW SOMETHING DISCHARGED OUT OF THE PASSENGER SIDE WINDOW OF THE TRUCK YOU WERE FOLLOWING, CORRECT?

A. CORRECT.

Q. HOW DID YOU KNOW SOMETHING WAS THROWN OUT? IT WAS NIGHTTIME.

A. WHEN IT HIT THE GROUND IT SPARKED.

Q. JUST ONCE OR A FEW TIMES?

A. I JUST REMEMBER ONE SPARK.

Q. BUT AT THE TIME, COULD YOU SEE WHAT THE OBJECT WAS?

A. NO.

Q. YOU SEE THIS OBJECT BEING THROWN OUT THE TRUCK'S PASSENGER SIDE WINDOW. WHAT HAPPENS NEXT?
A. WE DID A TRAFFIC STOP ON THAT VEHICLE AFTER WE YIELDED IT ON THE FREEWAY, PLACED THE SUSPECT INTO CUSTODY, THEN I WENT BACK AND RETRIEVED THAT ITEM.
Q. HOW LONG OF, I'LL SAY PURSUIT -- I DON'T KNOW IF THAT'S THE PROPER WORD -- BUT HOW LONG DID YOU FOLLOW THIS TRUCK FROM WHERE YOU FIRST SAW IT?
A. PROBABLY TOTAL DISTANCE WOULD BE A QUARTER MILE TOPS.
Q. BUT THE CAR EVENTUALLY PULLED OVER, CORRECT?
A. YES.
Q. DID YOU -- YOU SAID YOU WENT BACK TO RETRIEVE WHATEVER OBJECT WAS THROWN OUT THE WINDOW, CORRECT?
A. YES, I DID.
Q. OKAY. AND WHAT DID YOU FIND?
A. I FOUND -- NOT THE FLOOR -- ON THE GROUND THERE ON THE SHOULDER OF THE ONRAMP A SHOTGUN, STANDARD BRAND, AND ONE SHELL, SHOTGUN SHELL, NEARBY, ALONG WITH SEVERAL PIECES OF WOOD THAT HAD BROKEN OFF FROM THE HANDLE OF THAT SHOTGUN.
Q. BEFORE WE GET MORE INTO THE SHOTGUN, I'M GOING TO BACK YOU UP A LITTLE BIT MORE. ONCE THAT TRUCK WAS PULLED OVER, DID YOU SEE WHO THE DRIVER OF THAT TRUCK WAS?
A. YES.
Q. WHO WAS IT?
A. IT WAS THE DEFENDANT.
Q. MR. CUNNINGHAM?
A. CORRECT.

Q. WAS THERE ANYBODY ELSE IN THAT VEHICLE?
A. NO, THERE WAS NOT.
Q. SO YOU FOUND THE SHOTGUN. YOU FOUND PIECES OF THE SHOTGUN, CORRECT?
A. CORRECT.
Q. DID YOU IMPOUND THOSE?
A. YES, I DID.
Q. WERE YOU ABLE TO PIECE THE GUN BACK TOGETHER?
A. YES, I WAS.
Q. YOU SAID YOU FOUND ONE SHOTGUN SHELL. WHAT ELSE DID YOU FIND?
A. I FOUND ONE SHOTGUN SHELL NEARBY ON THE GROUND. THERE WAS ONE ROUND CHAMBER. AND LATER ON BEFORE I WAS ENTERING IT INTO EVIDENCE, I ALSO DISCOVERED THERE WERE TWO ADDITIONAL ROUNDS INSIDE THE CHAMBER -- OR NOT THE CHAMBER, BUT I DON'T KNOW WHAT YOU'D REALLY CALL THAT. BUT IN THE SHOTGUN BASICALLY ITSELF.
Q. OKAY. WELL, PLEASE TELL THE JURY WHAT YOU MEAN BY WHEN A ROUND IS CHAMBERED.
A. WHEN A ROUND IS CHAMBERED, BASICALLY THAT MEANS THAT IT'S ACTIVE AND READY TO BE FIRED WITH THE SQUEEZE OF THE TRIGGER. IN A SHOTGUN, BASICALLY, ONCE YOU PUMP THE ACTION THERE, IT CHAMBERS AROUND, MEANING AS SOON AS YOU SQUEEZE THE TRIGGER IT RELEASES THE SAFE. IT'S READY TO GO. SO THERE WAS ONE ROUND IN THAT POSITION. THERE WAS TWO ADDITIONAL ROUNDS THAT WERE STORED. YOU WOULD NEED TO PUMP A SHOTGUN TO ACTIVATE IT. SO --
Q. I'M NOW SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S

4 FOR IDENTIFICATION. DO YOU RECOGNIZE THESE?

(PEOPLE'S EXHIBIT 4, BROWN PAPER BAG CONTAINING SHOTGUN SHELLS, MARKED FOR IDENTIFICATION.)

A. YES, I DO.
Q. AND HOW DO YOU RECOGNIZE IT?
A. I BAGGED THEM UP.
Q. OKAY.
A. FOUR SHOTGUN SHELLS.
Q. AND YOU PUT SOME SORT OF MARKING ON IT TO KNOW THAT YOU IMPOUNDED IT?
A. CORRECT, A GUN SLASH EXPLOSIVE TAG.
Q. DOES THAT TAG APPEAR TO BE A FAIR AND ACCURATE REPRESENTATION OF THE TAG THAT YOU IMPOUNDED, THE SHOTGUN SHELLS?
A. YES, IT'S A PHOTOCOPY OF THE ORIGINAL TAG WHICH I PHOTOCOPIED.
Q. OKAY. IF YOU CAN GO AHEAD AND OPEN THESE NOW.
ALL RIGHT. NOW, IT APPEARS YOU HAVE FOUR DIFFERENT SHOTGUN SHELLS. HOW DO WE KNOW IF THESE SHELLS ARE EMPTY OR NOT EMPTY, OR CAN YOU MAKE THAT DETERMINATION?
A. WELL, THEY HAVEN'T BEEN DETONATED.
Q. AND YOU CAN TELL THAT BY LOOKING AND FEELING IT?
A. CORRECT. YES.
Q. HOW MANY OF THOSE ACTIVATED SHELLS WERE ACTUALLY INSIDE THE GUN?
A. ONE WAS CHAMBERED AND THERE WAS TWO ADDITIONALLY INSIDE THE GUN.
Q. OKAY. SO IF, SAY, THE ONE THAT WAS CHAMBERED WAS

FIRED, YOU COULD GET ANOTHER ONE UP?
A. CORRECT.
Q. YOU FOUND ALL THE DIFFERENT PIECES OF THAT PARTICULAR SHOTGUN?
A. YES, SIR.
THE COURT: REFERRING TO?
MR. LINK: I'M SORRY. PEOPLE'S 3.
BY MR. LINK:
Q. I'M NOW SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S 3. IT APPEARS TO BE A SHOTGUN. DO YOU RECOGNIZE THIS?
A. YES, I DO.
Q. HOW DO YOU RECOGNIZE THIS?
A. THAT WAS THE GUN I REMOVED FROM THE SIDE OF THE FREEWAY.
Q. AND HOW DO YOU KNOW THAT -- AND FEEL FREE TO GET UP -- HOW DO YOU KNOW THAT THIS PARTICULAR GUN WAS THE ONE THAT YOU REMOVED FROM THE SIDE OF THE FREEWAY?
A. USUALLY, I REMEMBER, I HAD TO PICK UP THE WOOD PIECES. THERE'S THREE SPLINTERED WOOD PIECES FROM THE HANDLE. I'VE MEASURED THAT SHOTGUN. IT MEASURES TO BE AN OVERALL LENGTH OF 25 INCHES. AND I BOXED IT UP AND PACKAGED IT MYSELF.
Q. OKAY. THE OVERALL LENGTH OF THE GUN IS 25 INCHES, YOU SAID?
A. CORRECT.
Q. AND HOW DID YOU MEASURE THAT?
A. AT THE TIME OF THE INCIDENT THAT EVENING, I MEASURED IT ACTUALLY WITH A RULER JUST LIKE THIS, BASICALLY

LAID IT ON THE HOOD OF THE CAR, DID A 3 BY 3, INCHED IT OUT THAT WAY. IT CAME OUT ACTUALLY THAT NIGHT TO BE 25.5 INCHES LONG. TODAY, WHEN I BROUGHT IT INTO EVIDENCE, I ACTUALLY BROUGHT IN A REGULAR RULER, MEASURED IT TO BE 25 INCHES OVERALL.

Q. SO YOU HAD AN OPPORTUNITY TO MEASURE IT TODAY?

A. YES, I DID.

Q. DID YOU HAVE AN OPPORTUNITY TO MEASURE THE BARREL?

A. YES, I DID.

Q. HOW LONG WAS THE BARREL?

A. THE BARREL WAS 13.5 INCHES.

Q. DOES THIS SHOTGUN HAVE A MORE COMMON NAME THAN JUST A SHOTGUN?

MR. GULLEY: OBJECTION. WITHDRAW.

THE WITNESS: A SAWED-OFF SHOTGUN.

BY MR. LINK:

Q. DOES THIS PARTICULAR SHOTGUN HAVE A SPECIAL NAME?

A. SAWED-OFF SHOTGUN.

Q. AND YOU RECOGNIZE IT AS SUCH?

A. YES, I DO.

Q. AND YOU'VE HAD EXPERIENCE WITH A SAWED-OFF SHOTGUN?

A. YES, I HAVE.

Q. AND YOU'VE SEEN THEM BEFORE?

A. YES.

Q. AND YOU'RE ABLE TO IDENTIFY THEM?

A. YES.

MR. LINK: ONE SECOND, YOUR HONOR.

YOUR HONOR, AT THIS TIME, I WOULD LIKE TO SHOW A SHORT

VIDEO.

THE COURT: IS IT ALL READY TO GO?

MR. LINK: YES, SIR.

THE COURT: OKAY. GO AHEAD.

MR. GULLEY: YOUR HONOR, IS IT POSSIBLE THAT WE CAN PLACE IT IN A POSITION THAT MY CLIENT CAN SEE IT?

THE COURT: MR. LINK -- LET'S SEE.

MR. LINK: I CAN SHOW IT TWICE, YOUR HONOR.

THE COURT: LET'S DO THIS. LET'S ASK THE COURT REPORTER WHILE THE VIDEO IS BEING SHOWN TO MOVE OUT. SHE WON'T BE REPORTING ANYTHING WHILE IT'S BEING SHOWN, AND IT CAN BE POSITIONED WHERE SHE IS AND IN SUCH A WAY THAT I THINK THE JURORS AND THE DEFENDANT, DEFENSE TABLE, CAN SEE IT.

BY MR. LINK:

Q. OKAY. AND BEFORE I DO THAT, YOUR POLICE CAR, IS IT EQUIPPED WITH A VIDEO?

A. YES, SIR, IT IS.

Q. AND DO YOU KNOW WHETHER OR NOT A VIDEO WAS TAKEN OF THIS PARTICULAR INCIDENT?

A. YES, IT WAS. WHEN I ACTIVATED THE OVERHEAD LIGHTS, IT ACTUALLY TURNS ON.

Q. AND THAT VIDEO WAS TURNED OVER TO THE DISTRICT ATTORNEY'S OFFICE, CORRECT?

A. YES, SIR, IT WAS.

MR. LINK: OKAY. YOU READY?

THE COURT: OKAY. FROM THIS POINT FORWARD, WE WON'T SAY ANYTHING FURTHER. BUT MR. LINK WILL SET UP THE VIDEO. THE COURT REPORTER CAN BE EXCUSED. IF SHE WOULD MOVE

HER CHAIR AND MACHINE AWAY, WE'LL SET THE VIDEO UP WHERE SHE IS NOW.

(PEOPLE'S EXHIBIT 7, VIDEOTAPE TAKEN FROM STEPHEN PAZ'S CAR, WAS PLAYED, NOT REPORTED.)

THE COURT: WE'RE BACK ON THE RECORD. ACTUALLY, FIRST OFF, MR. LINK, LET'S -- WELL, WE HAVE -- YOU HAVEN'T MARKED THAT VIDEOTAPE YET, HAVE YOU?

MR. LINK: I JUST DID. THAT'S PEOPLE'S --

THE CLERK: 7.

THE COURT: OKAY. PEOPLE'S 7 IS A VIDEOTAPE THAT'S JUST BEEN SHOWN TO THE JURY WITHOUT ANY COMMENTS. IT'S APPROXIMATELY 20 SECONDS OR SO IN LENGTH. AND AT THIS TIME, THE PEOPLE ARE GOING TO RE-SHOW THE VIDEO AND OFFICER PAZ WILL NARRATE IT, OR ANSWER QUESTIONS, HOWEVER MR. LINK WISHES TO EXPLAIN TO THE COURT.

(PEOPLE'S EXHIBIT 7, VIDEOTAPE TAKEN FROM STEPHEN PAZ'S CAR, MARKED FOR IDENTIFICATION.)

BY MR. LINK:

Q. IN THIS PARTICULAR VIDEO, THIS WAS NOT YOUR VIDEO, WAS IT?

A. NO.

Q. OUT OF WHOSE CAR WAS THIS VIDEO?

A. THIS WOULD HAVE BEEN SERGEANT ZMIJEWSKI'S CAR. IT WAS A LEAD CAR.

Q. AND I'LL HAVE YOU TALK THROUGH THE VIDEO, BUT COULD YOU PLEASE SET IT UP FOR THE JURORS.

THE COURT: AND OFFICER, IF YOU'RE READY, RATHER THAN BE AT THE WITNESS STAND, COULD YOU GET A LITTLE BIT

CLOSER TO THE REPORTER BECAUSE SHE'S BLOCKED AND NOT GOING TO BE ABLE TO HEAR YOU UNLESS YOU'RE CLOSER.

BY MR. LINK:

Q. YOU CAN GO AHEAD AND SET IT UP FOR THE JURY RIGHT NOW.

A. WHAT YOU JUST SAW FROM THE BEGINNING WAS BASICALLY THE POLICE VEHICLES AT THE TURNAROUND POINT, WHICH IS DIRECTLY UNDER THE BRIDGE, WHICH IS i-8 AND NORTH MOLLISON RIGHT THERE. AS WE TURN AROUND, WE BOTH RUN THE RED LIGHT THERE FOLLOWING THE VEHICLE TO GET ONTO THE FREEWAY. AS YOU'RE STARTING TO PRESS TOWARDS THE TOP PORTION OF THE ONRAMP, YOU MAY NOT BE ABLE TO SEE IT BECAUSE THE TRACKING WAS KIND OF FUZZY THERE, BUT YOU CAN ACTUALLY SEE SOMETHING HIT THE GROUND TOWARDS THE RIGHT-HAND SIDE OF THE SHOULDER, BETWEEN THE WHITE SHOULDER LINE, AND ACTUALLY THERE'S A FENCE LINE OVER THERE, IF YOU LOOK CLOSELY AT THAT YOU MAY BE ABLE TO SEE SOMETHING HIT THE GROUND AND SPARK AND BUMP OFF THE GROUND.

MR. GULLEY: EXCUSE ME. I HAVE NO OBJECTION TO THE OFFICER POINTING OUT THE SPARK WHEN IT HAPPENS.

THE COURT: YEAH, WHY DON'T YOU JUST KIND OF POINT TO IT WHEN YOU SEE IT HAPPEN.

THE WITNESS: AND YOU'LL ACTUALLY ALSO HEAR, AND IF YOU LISTEN CLOSELY, YOU CAN HEAR VOICES, WHICH IS SERGEANT ZMIJEWSKI SAYING THAT THE SHOTGUN WAS JUST DISCHARGED OUT THE VEHICLE WINDOW.

THE COURT: AND WHEN YOU SAY DISCHARGED, DO YOU MEAN THROWN OUT?

THE WITNESS: THROWN OUT.

THE COURT: NOW, YOU'RE STANDING -- YOU'RE KIND OF IN THE WAY OF THE DEFENDANT. COULD YOU STAND ON THE OTHER SIDE, OFFICER.

THE WITNESS: IT'S GOING UP ON THE FREEWAY RIGHT THERE. YEAH, THIS IS ACTUALLY WHERE HE'S ALREADY STARTING TO YIELD AT THIS POINT IN TIME.

MR. LINK: YOUR HONOR, I'M ACTUALLY GOING TO REWIND IT BECAUSE THE OFFICER WASN'T QUITE IN POSITION.

THE WITNESS: THIS IS WHERE HE PICKS UP RIGHT FROM WHERE WE'RE GOING ON THE FREEWAY. IF YOU LOOK, THAT'S THE DEFENDANT'S VEHICLE THAT JUST VEERED BACK OVER ONTO THE MAIN LANE THERE, SO HE WOULD HAVE ALREADY DISCHARGED IT A WAYS BACK. AT THIS POINT IN TIME HE'S BEGINNING TO SLOW DOWN AND YIELD OVER TO THE SHOULDER OF THE ROAD.

BY MR. LINK:

Q. DID YOU SEE THE SPARKS IN THAT PARTICULAR --

A. NO.

Q. I'LL PLAY IT ONE MORE TIME.

A. YOU MAY NOT BE ABLE TO SEE IT FROM ZMIJEWSKI'S VIDEOTAPE.

Q. OH, OKAY.

A. RIGHT THERE. I JUST SAW IT RIGHT THERE. YOU WANT TO REWIND IT AGAIN NOW THAT I ACTUALLY SAW IT AND POINT IT OUT? DO IT ONE MORE TIME. IF YOU LOOK REAL CLOSE, IT'S GOING TO BE RIGHT OVER IN THIS PORTION OVER HERE TOWARDS THE UPPER RIGHT. AND THERE IT IS, RIGHT THERE OVER BY THE DIRT LINE ALMOST.

Q. THANK YOU. AND ONCE AGAIN, THAT'S A FAIR AND ACCURATE REPRESENTATION OF WHAT YOU SAW THAT NIGHT?
A. YES.
Q. AND YOU ACTUALLY SAW IT YOURSELF?
A. YES.
Q. PLEASE HAVE A SEAT. OFFICER, WERE YOU THERE WHEN THE DEFENDANT WAS MIRANDIZED?
A. YES, SIR, I WAS.
Q. DID YOU DO IT?
A. YES, I DID.
Q. AND DID HE WAIVE THOSE RIGHTS?
A. TO ME HE DID NOT.
Q. OKAY. SO HE INVOKED?
A. EXCUSE ME?
Q. HE CHOSE NOT TO --
MR. GULLEY: OBJECTION, YOUR HONOR.
THE WITNESS: NO, HE DID SPEAK TO ME.
BY MR. LINK:
Q. OKAY. WHEN HE SPOKE TO YOU --
THE COURT: WELL, JUST A MINUTE.
THE WITNESS: I'M CONFUSED. MAYBE I MAY HAVE MISUNDERSTOOD YOUR QUESTION.

EXAMINATION

BY THE COURT:
Q. WAS HE MIRANDIZED?
A. YES, HE WAS MIRANDIZED.
Q. WHO MIRANDIZED HIM?
A. I DID MIRANDIZE HIM.

Q. DID HE SAY HE WANTED TO SPEAK TO YOU OR THAT HE DIDN'T WANT TO SPEAK TO YOU?

A. HE SAID -- HE DID SPEAK TO ME.

Q. DID HE WAIVE HIS MIRANDA RIGHTS?

A. NO, HE DID NOT.

THE COURT: OKAY. WE NEED TO CALL A TIME OUT. THE JURY IS EXCUSED UNTIL 2:30. LADIES AND GENTLEMEN, THIS WILL ACTUALLY BE PROBABLY YOUR AFTERNOON BREAK. WE'LL MAKE IT 2:35. PLEASE REMEMBER NOT TO FORM OR EXPRESS ANY OPINIONS ON THIS CASE OR DISCUSS ANY OF THE EVIDENCE THAT YOU'VE HEARD. LEAVE YOUR NOTEBOOKS IN PLACE. AND WE SHOULD BE READY TO GO AT 2:35.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: THE COURT HAS EXCUSED THE JURY, WHICH HAS NOW LEFT THE COURTROOM, BECAUSE WE'VE GOT INTO AN AREA WHICH WAS UNCLEAR TO THE COURT, AT LEAST AS TO WHETHER OR NOT THE -- HOW THE DEFENDANT WAS ADVISED OF HIS RIGHTS, WHETHER OR NOT HE WAIVED, AND WHETHER OR NOT HE INVOKED. AND WE NEED TO DETERMINE THIS OUTSIDE THE PRESENCE OF THE JURY.

SO, MR. LINK, IF YOU NEED A FEW MOMENTS, YOU CAN HAVE IT. IF YOU'RE READY TO PROCEED WITH THIS 402 HEARING, THEN YOU MAY NOW DO SO.

MR. LINK: I'M READY TO PROCEED.

EXAMINATION

BY MR. LINK:

Q. AT ONE POINT, YOU READ THE DEFENDANT HIS RIGHTS, CORRECT?

A. YES, I DID.
Q. WHEN WAS THAT?
A. THAT WAS WHEN I WAS BACK IN THE EL CAJON POLICE DEPARTMENT JAIL.
Q. DID HE SEEM TO UNDERSTAND THOSE RIGHTS?
A. HE DID.
Q. DID HE -- DID HE AGREE TO TALK TO YOU?
A. YES, HE DID.
Q. OKAY. AND IN YOUR REPORT, IT SAYS -- SO HE SAID YES TO YOU, HE AGREED TO TALK TO YOU?
A. HE SPOKE FREELY TO ME. HOWEVER, WHEN BRIAN CHASE, OFFICER CHASE, CAME IN, HE DID NOT WANT TO TALK TO OFFICER CHASE.
Q. OKAY. HOW LONG WERE YOU TALKING TO THE DEFENDANT BEFORE OFFICER CHASE WALKED IN?
A. QUITE A WHILE BECAUSE I ACTUALLY RAN HIM THROUGH FST'S BACK IN THE JAIL AREA.
Q. OKAY. AND THEN ONCE OFFICER CHASE WALKED IN, HE THEN SAID, "I DON'T WANT TO TALK ANYMORE"?
A. OFFICER CHASE CAME IN, ASKED IF HE COULD QUESTION HIM FURTHER KNOWING THAT HE HAD ALREADY BEEN MIRANDIZED BECAUSE HE HAD ALL THE INFORMATION FROM THE CRIME SCENE, AND WANTED TO TALK FURTHER ABOUT IT. AND AT THAT POINT, HE DIDN'T WANT TO TALK.
Q. FORGET -- NOT INCLUDING THE DUI QUESTIONS, DID HE SAY ANYTHING ABOUT THIS PARTICULAR CRIME?
A. YES, HE DID.
Q. WHAT DID HE SAY?

A. MAY I REFER TO MY NOTES?

Q. PLEASE.

MR. GULLEY: YOUR HONOR, SOME OF THESE NOTES ARE SOMETHING I DON'T HAVE.

THE WITNESS: IT'S ACTUALLY THE ARREST REPORT, STATEMENTS OF CUNNINGHAM.

THE COURT: OKAY. THE REPORT THAT YOU'RE REFERRING TO OFFICER, IS IT ONE THAT YOU PREPARED?

THE WITNESS: IT'S THE SAME ONE THAT'S WITH OFFICER CHASE'S, YES.

THE COURT: WHO AUTHORED THIS REPORT, YOU OR CHASE?

THE WITNESS: I DID. IT'S SUPPLEMENTAL TO OFFICER CHASE'S REPORT.

THE COURT: DO YOU HAVE THAT MR. GULLEY? IS IT SIGNED BY YOU? DOES IT SHOW ON IT THAT IT IS YOUR REPORT?

THE WITNESS: YES, SIR, IT DOES.

MR. GULLEY: OKAY. I HAVE IT.

THE COURT: OKAY. PROCEED, MR. LINK. MR. GULLEY APPEARS TO HAVE THAT DOCUMENT.

MR. LINK: THANK YOU.

BY MR. LINK:

Q. REGARDING THIS PARTICULAR CRIME THAT HE'S CHARGED WITH AND NOT THE DUI, WHAT DID THE DEFENDANT SAY TO YOU?

A. AFTER HE SAID YES THAT HE UNDERSTOOD HIS RIGHTS, WHEN I ASKED IF HE WANTED TO TELL ME WHAT HAPPENED HE SAID, QUOTE, "I SAID DON'T FUCK WITH ME TO THE PEOPLE PERIOD," UNQUOTE. HE THEN WENT ON TO SAY, "I SAID LEAVE ME ALONE TO FOUR OR FIVE PEOPLE WHO WERE TALKING CRAZY PERIOD," UNQUOTE.

HE THEN WENT ON TO TELL ME, "THEY WERE THE SAME PEOPLE THAT TOOK MY CELL PHONE," AND THAT'S WHEN HE MADE NO FURTHER STATEMENTS.

Q. OKAY. DID HE SAY ANYTHING ABOUT HAVING A GUN OR POSSESSING A GUN?

A. WELL, AFTER OFFICER CHASE ARRIVED, HE MADE SPONTANEOUS STATEMENTS AT THAT POINT SAYING, "THE ONLY THING YOU'RE GOING TO GET ME ON IS LITTERING." HE THEN SAID, "I DIDN'T WANT IT. I THREW IT AWAY." A SHORT TIME LATER HE MADE ANOTHER SPONTANEOUS STATEMENT SAYING, "ALL I DID WAS THROW AWAY SOME METAL I DIDN'T NEED IN MY CAR."

Q. DID HE EVER SAY ANYTHING ABOUT THROWING AWAY A STRAP?

A. NOT TO ME.

MR. LINK: OKAY. NOTHING FURTHER.

THE COURT: ON THE ISSUE OF THE MIRANDA WARNING, MR. GULLEY, DO YOU HAVE ANY VOIR DIRE?

MR. LINK: I CAN PROBABLY SHORTEN THIS UP. I'M NOT GOING TO GO INTO HIS STATEMENTS.

THE COURT: OKAY.

MR. LINK: I APOLOGIZE.

THE COURT: OKAY.

MR. LINK: UNLESS MR. GULLEY WOULD LIKE TO.

THE COURT: SO THE STATEMENTS THAT THIS WITNESS JUST ATTRIBUTED TO THE DEFENDANT ARE NOT STATEMENTS THAT THE PEOPLE INTEND TO ASK OR GO INTO IN FRONT OF THE JURY, CORRECT?

MR. LINK: CORRECT.

THE COURT: OKAY. I'M A LITTLE CONCERNED BECAUSE OF WHERE WE LEFT THINGS WITH THE JURY. AND, OF COURSE, THE PROBLEM WE HAVE IS THE JURY MAY HAVE BEEN LEFT WITH THE IMPRESSION THAT THE DEFENDANT REFUSED TO WAIVE HIS MIRANDA RIGHTS, OR INVOKED HIS RIGHT TO REMAIN SILENT. IN ONE INSTANCE THE OFFICER, I BELIEVE, TESTIFIED THAT THE DEFENDANT AGREED TO TALK TO HIM, BUT IN RESPONSE TO MY QUESTIONS SAID THE DEFENDANT DID NOT WAIVE HIS MIRANDA RIGHTS. IT KIND OF SOUNDS LIKE HE DID WAIVE HIS MIRANDA RIGHTS IF HE SAID HE AGREED TO TALK TO THE OFFICER.

MR. LINK: HOW ABOUT THIS, YOUR HONOR. I DON'T THINK ANY STATEMENTS -- I THINK ALL STATEMENTS THAT CAME FROM THIS PARTICULAR DEFENDANT ON THAT NIGHT COME IN BECAUSE THEY WERE EITHER MIRANDIZED AND HE INVOKED --

THE COURT: LET ME INTERRUPT. THAT'S A MOOT ISSUE BECAUSE YOU'RE NOT GOING TO BRING THEM IN. WHAT THE -- AND IF YOU WANT TO CHANGE YOUR MIND YOU CAN DO THAT, AND LET US KNOW. BUT WHAT I'M CONCERNED ABOUT IS LEAVING THE JURY WITH THE IMPRESSION IF WE JUST GO INTO SOME OTHER SUBJECT AREA THAT THE DEFENDANT INVOKED, AND THAT IS AN IMPRESSION THAT'S IMPROPER FOR THE JURY TO HAVE, AND IT ALSO APPEARS TO BE INACCURATE.

MR. LINK: OKAY. I WILL GO AHEAD THEN AND CHANGE MY MIND FOR PURPOSES OF CLARITY FOR THE JURY. I'M GOING TO GO AHEAD AND ELICIT ONE OR TWO OF THOSE STATEMENTS.

THE COURT: OKAY. IF THAT'S THE CASE, THEN, I THINK WE NEED TO FIND OUT IF THERE INDEED WAS A MIRANDA WARNING AND/OR A WAIVER. AND I WOULD LIKE TO ASK THE OFFICER

IN THIS 402 HEARING, WHICH WE'RE NOW HAVING, THESE QUESTIONS:

EXAMINATION

BY THE COURT:

Q. DID YOU HAVE YOUR MIRANDA CARD WITH YOU?

A. YES, SIR, I DID.

Q. DID YOU READ THE MIRANDA RIGHTS FROM THAT CARD TO THE DEFENDANT?

A. YES, SIR, I DID.

Q. DID YOU ASK HIM WHETHER OR NOT HE UNDERSTOOD HIS RIGHTS?

A. YES, SIR, I DID.

Q. DO YOU REMEMBER WHAT HE SAID?

A. HE SAID, "YES."

Q. DID YOU ASK HIM WHETHER OR NOT HE WISHED TO WAIVE THOSE RIGHTS AND SPEAK TO YOU?

A. YES, SIR, I DID.

Q. DID YOU ASK -- I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH. WAS THAT THE EXACT QUESTION YOU ASKED?

A. NO, ACTUALLY I ASKED VERBATIM FROM MY CARD, "DO YOU WANT TO TALK ABOUT WHAT HAPPENED?"

Q. WAS THE FIRST QUESTION WHETHER HE UNDERSTOOD HIS RIGHTS?

A. YES.

Q. AND HE SAID, "YES"?

A. YES.

Q. AND THEN YOUR NEXT QUESTION WAS WHAT?

A. IF I COULD ASK HIM TO TALK ABOUT WHAT HAPPENED.

Q. IF YOU COULD ASK HIM TO TALK ABOUT WHAT HAPPENED?

A. REPEAT YOUR QUESTION AGAIN. I'M SORRY. I MAY HAVE MISUNDERSTOOD WHAT YOU SAID.
Q. AFTER YOU READ HIM HIS RIGHTS, YOU TESTIFIED THAT YOU ASKED HIM IF HE UNDERSTOOD HIS RIGHTS?
A. CORRECT.
Q. AND HE SAID, "YES"?
A. HE SAID, "YES."
Q. AFTER HE SAID "YES," WHAT WAS YOUR NEXT QUESTION?
A. AFTER HE SAID "YES," I ASKED, "DO YOU MIND TALKING ABOUT WHAT HAPPENED?"
Q. WHAT DID HE SAY?
A. HE SAID, "YES."
THE COURT: OKAY. IF THAT'S THE TESTIMONY, THEN THAT SHOULD BE BROUGHT OUT IN FRONT OF THE JURY, MR. LINK. AND, THEN, IF YOU WANT TO FOLLOW-UP WITH SOME OF THE QUESTIONS AND ANSWERS, YOU MAY DO SO, SUBJECT TO ANY ADDITIONAL QUESTIONING THAT MR. GULLEY MAY HAVE ON THE ISSUE.
MR. LINK: OKAY.
THE COURT: ANYTHING FURTHER, MR. GULLEY?
MR. GULLEY: I WOULD JUST --

EXAMINATION

BY MR. GULLEY:
Q. WAS THIS RECORDED?
A. NO, IT WAS NOT.
Q. AND WHAT TIME DID THIS OCCUR?
A. THIS WOULD HAVE BEEN PROBABLY APPROXIMATELY 11:30, 11:45.
Q. OKAY. ARE YOU SURE?

A. I COULDN'T BE 100 PERCENT CERTAIN OF THE TIME.

Q. YOU HAVE YOUR REPORT IN FRONT OF YOU, CORRECT?

A. YES, I DO.

Q. WHAT TIME WAS THE STOP?

A. THE STOP WAS JUST ABOUT 11 O'CLOCK.

Q. SO THIS WAS ABOUT HALF AN HOUR TO 45 MINUTES?

A. IT WOULD HAVE BEEN BECAUSE THE TIME FOR PROCESSING AND EVERYTHING ELSE LIKE THAT. AND GENERALLY, I HAVE A SPECIFIC ORDER WHEN I DO MY ARREST REPORT WHICH IS GO RIGHT DOWN THE FACE PAGE. AND WHEN I COME TO THE PORTION WHERE IT COMES TIME TO MIRANDIZE, THAT'S WHEN I DO IT RIGHT THERE.

Q. ALL RIGHT. NOW, MY UNDERSTANDING WAS YOU TOOK HIM TO THE STATION AND THEN YOU DID THE FIELD SOBRIETY FIRST?

A. YES, I DID.

Q. AND THEN YOU HAD HIM BLOW INTO THE MACHINE SECOND?

A. YES.

Q. THEN YOU ACTUALLY GAVE HIM HIS MIRANDA RIGHTS?

A. YOU KNOW, I'M NOT GOING TO SAY YES OR NO TO THAT BECAUSE I DON'T KNOW WHETHER I MIRANDIZED HIM FIRST OR AFTER THE FIELD SOBRIETY TEST.

MR. GULLEY: THANK YOU. NOTHING FURTHER.

THE COURT: ALL RIGHT. NOW, WHAT I UNDERSTAND THAT YOU WANT TO ASK IS SOME OF THE QUESTIONS AND ANSWERS AFTER THE MIRANDA WAIVER. BUT NONE OF THIS STUFF REGARDING OFFICER CHASE COMING IN AND THE DEFENDANT NOT WANTING TO TALK TO OFFICER CHASE, NONE OF THAT CAN COME IN.

MR. LINK: OKAY.

THE COURT: UNDERSTOOD?

MR. LINK: BECAUSE I HAVEN'T LAID THE FOUNDATION FOR THAT?

THE COURT: NO, BECAUSE THAT'S THE DEFENDANT INVOKING. THAT'S EVIDENCE OF INVOCATION, WHICH IS IMPROPER BEFORE THE JURY.

MR. LINK: AGREED. AND, YOUR HONOR, IF I NEED TO DO A 402 WITH CHASE, WHO IS SITTING NEXT TO ME, HE DID INVOKE AFTER THAT. BUT THEN AFTER THAT, HE JUST STARTED TALKING. AND THAT'S WHY I MAYBE WANT TO PUT CHASE ON THE STAND TO DO A 402 SO I CAN GET THOSE STATEMENTS IN AFTER I GET THESE STATEMENTS.

THE COURT: LET'S DO IT.

MR. LINK: YES, SIR.

THE COURT: OFFICER PAZ, YOU'RE EXCUSED FOR THE MOMENT, AND WE'LL GET OFFICER CHASE UP HERE.

OFFICER, PLEASE RAISE YOUR RIGHT HAND TO BE SWORN.

BRIAN CHASE,

HAVING BEEN FIRST DULY ADMINISTERED AN OATH IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE SECTION 2094, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

MR. LINK: DOES OFFICER PAZ HAVE TO LEAVE THE COURTROOM?

THE COURT: NO.

EXAMINATION

BY MR. LINK:

Q. AND, SIR, WHAT IS YOUR NAME?

A. BRIAN CHASE, C-H-A-S-E.

Q. WHAT IS YOUR OCCUPATION?

A. I'M A POLICE OFFICER WITH THE CITY OF EL CAJON.

Q. FOR HOW LONG?

A. I'VE BEEN WITH THE CITY OF EL CAJON FOR ABOUT A YEAR NOW. AND PRIOR TO THAT, I WAS WITH THE CITY OF SAN DIEGO FOR 10 YEARS.

Q. ON SEPTEMBER 12TH, 2004, WERE YOU IN UNIFORM IN A MARKED PATROL CAR AND RESPONDING TO A CALL OF A POTENTIAL ASSAULT SITUATION?

A. YES, I WAS.

THE COURT: WE CAN ACTUALLY FAST FORWARD TO THE POINT JUST FOR NOW. I MEAN, YOU'LL WANT TO DO THIS LATER, BUT --

MR. LINK: AGREED. I DIDN'T KNOW HOW MUCH YOU WANTED.

THE COURT: JUST FAST FORWARD TO WHEN HE CAME INTO THE ROOM.

BY MR. LINK:

Q. AT SOME POINT, DID YOU HAVE AN OPPORTUNITY TO SPEAK TO THE DEFENDANT?

A. YES, I DID.

Q. WHEN WAS THAT?

A. THAT WAS BACK AT THE PROCESSING AREA AT THE EL CAJON POLICE DEPARTMENT.

Q. WHEN YOU WALKED INTO THE ROOM, THE DEFENDANT WAS THERE WITH WHO ELSE?

A. WITH OFFICER PAZ.

Q. AND NOBODY ELSE?

A. NOT THAT I RECALL.

Q. WHEN YOU WALKED IN THE ROOM, WHAT DID THE DEFENDANT SAY TO YOU, IF ANYTHING?

A. HE DIDN'T WANT TO TALK TO ME ABOUT WHAT HAD HAPPENED. I WAS UNDER THE IMPRESSION THAT HE HAD INVOKED, SO I DIDN'T ASK HIM ANY QUESTIONS RELATED TO WHAT HAD OCCURRED.

Q. SO YOU WALKED INTO THE ROOM, YOU DIDN'T ASK HIM A QUESTION?

A. NO, I DID NOT. HE DID NOT WANT TO TALK TO ME.

Q. DID YOU HEAR OFFICER PAZ ASK ANY QUESTIONS?

A. NO, I DID NOT.

Q. SO HE WAS JUST SILENT?

A. I CAME IN AND BASICALLY HE SAID HE WASN'T GOING TO TALK TO ME.

Q. WHAT HAPPENED NEXT?

A. I JUST STARTED DOING THE BOOKING, THE FISH LIST FOR BOOKING. HE MADE A COUPLE OF SPONTANEOUS STATEMENTS.

Q. WHAT DID HE SAY?

A. I HAVE TO LOOK AT MY REPORT TO KNOW THE EXACT QUOTE. HE MADE TWO SPECIFIC ONES. ONE WAS, QUOTE, "THAT BITCH KNOW SHE STOLE THAT PHONE AND THEM CHECKS," END QUOTE. THE OTHER ONE IS, QUOTE, "I'M MAD BECAUSE I HAD TO GET RID OF MY STRAP," END QUOTE.

MR. LINK: OKAY. THANK YOU.

THE COURT: DID HE SAY ANYTHING ABOUT, "ALL YOU'VE GOT ME ON IS LITTERING," OR ANYTHING LIKE THAT?

THE WITNESS: I DIDN'T HEAR THAT. I WAS IN AND OUT

BECAUSE WE HAVE TO GET OTHER FORMS AND THINGS.

THE COURT: OKAY. NOW, WHEN YOU -- MR. GULLEY ANY CROSS-EXAMINATION?

MR. GULLEY: YEAH.

EXAMINATION

BY MR. GULLEY:

Q. YOU SAY YOU WERE FILLING OUT SOME FORMS AT THE TIME YOU WERE IN THERE AFTER HE SAID HE DIDN'T WANT TO SPEAK TO YOU?

A. YES.

Q. WHAT WAS THIS FORM?

A. IT WAS A PC DECLARATION FOR THE JAIL TO GET HIM INTO THE COUNTY JAIL.

Q. AND YOU DID FILL OUT THIS FORM IN FRONT OF HIM?

A. YES; I ALWAYS DO IT IN THAT AREA BECAUSE THAT'S WHERE THEY'RE KEPT.

Q. DO YOU HAVE TO ASK HIM ANY QUESTIONS REGARDING THE FORM?

A. NO, I HAD ALL THE INFORMATION. IT'S JUST NAME, DATE OF BIRTH, CHARGES, TIME, PLACE, AND LOCATION OF THE INCIDENT, AND TIME, PLACE, AND LOCATION OF ARREST.

Q. SO IT WAS YOUR TESTIMONY THERE WAS NO STATEMENTS MADE IN THAT PERIOD OF TIME BETWEEN YOU, HIM, OR OFFICER PAZ?

A. JUST THE TWO SPONTANEOUS STATEMENTS I JUST QUOTED.

Q. AND OFFICER PAZ DIDN'T SAY ANYTHING IN RESPONSE TO THOSE STATEMENTS?

A. NO.

Q. HE DIDN'T SAY ANYTHING AT ALL?

A. NO.

Q. AND HOW LONG WERE YOU GUYS IN THERE BEFORE THOSE STATEMENTS WERE MADE?

A. I DON'T RECALL.

Q. MORE THAN 5 MINUTES, LESS THAN 10?

A. PROBABLY 10, 15. I WAS FILLING OUT THE DECLARATION AND THE FISH LIST FOR THE JAIL.

Q. AND IT WAS APPROXIMATELY 15 MINUTES INTO THAT WHEN THESE STATEMENTS WERE MADE?

A. SOMEWHERE IN-BETWEEN THE TIME I GOT THERE AND THE TIME I WAS DONE WITH THE DECLARATION. IT TOOK ME ABOUT 10 OR 15 MINUTES TO FILL OUT THOSE TWO PIECES OF PAPER.

Q. AND IT WAS MY UNDERSTANDING YOU DIDN'T SAY ANYTHING TO OFFICER PAZ AT THE TIME?

A. I MAY HAVE ASKED HIM FOR A TOP SHEET TO GET THE INFORMATION, BUT THAT'S IT. BUT NOTHING THAT RELATED TO WHAT HAD OCCURRED AT 545 NORTH MOLLISON.

Q. AND, AGAIN, THERE WAS NO RECORDING OF THIS; IS THAT CORRECT?

A. NO, THERE IS NOT.

MR. GULLEY: NOTHING FURTHER, YOUR HONOR.

THE COURT: OFFICER, IF YOU'RE CALLED TO TESTIFY ON WHAT YOU JUST TESTIFIED TO IN FRONT OF THE JURY, YOU MAY NOT TESTIFY THAT THE DEFENDANT SAID HE DIDN'T WANT TO TALK TO YOU.

THE WITNESS: OKAY.

THE COURT: YOU CAN'T SAY THAT, YOU CAN'T INTIMATE IT, YOU CAN'T GET INTO IT AT ALL.

THE WITNESS: OKAY.

THE COURT: YOUR TESTIMONY WILL BE THAT YOU ENTERED THE ROOM, STARTED FILLING OUT SOME PAPERS, AND THEN AT SOME POINT, UNSOLICITED SPONTANEOUS STATEMENTS WERE MADE BY THE DEFENDANT.

THE WITNESS: YES, YOUR HONOR.

THE COURT: AND YOU CANNOT TESTIFY EITHER THAT YOU THOUGHT HE HAD INVOKED HIS RIGHTS.

THE WITNESS: YES, YOUR HONOR.

THE COURT: OKAY. ARE WE ALL SQUARED?

MR. GULLEY: YOUR HONOR, I'M STILL CONFUSED ON THESE OTHER STATEMENTS. THE ONLY THING HE CAN GET INTO IS, "ALL YOU'VE GOT ME IN ON IS LITTERING." IT'S MY UNDERSTANDING THE COURT IS NOT ALLOWING THOSE STATEMENTS IN?

THE COURT: WELL, OFFICER PAZ SAID HE HEARD THOSE STATEMENTS. I'M NOT SURE THEY WERE SPONTANEOUS OR IN RESPONSE TO QUESTIONS. WE MAY NEED TO GET OFFICER PAZ BACK ON THE WITNESS STAND TO DETERMINE THAT. THIS OFFICER DIDN'T HEAR ANY OF THOSE STATEMENTS. APPARENTLY OFFICER PAZ DID. IF YOU INTEND TO GET INTO THOSE STATEMENTS, MR. LINK, THEN WE'LL NEED TO GET OFFICER PAZ BACK ON THE STAND.

MR. LINK: AGREED, AND THAT'S WHAT I INTEND TO DO.

THE COURT: OKAY. I'LL HAVE YOU GUYS SWITCH PLACES, PLEASE.

THE COURT: OKAY. AND YOU BOTH REMAIN UNDER OATH. OFFICER PAZ IS BACK ON THE WITNESS STAND. AND, MR. LINK, YOU MAY EXAMINE.

MR. LINK: WITH THE JURY?

THE COURT: NO.

MR. LINK: WELL, I THOUGHT WE'VE ALREADY ESTABLISHED --

THE COURT: JUST A MOMENT. WHAT WE'RE TAKING ABOUT NOW IS WHETHER OR NOT PAZ HEARD THE DEFENDANT SAY, "ALL YOU'VE GOT ME IN ON IS LITTERING," AND, "ALL I WAS DOING WAS GETTING RID OF SOME METAL." NOW, IF YOU INTEND TO ELICIT THAT, MAYBE YOU CAN FIND OUT IF THAT WAS AFTER MIRANDA OR IF IT WAS SPONTANEOUS AND WHEN AND WHERE IT WAS SAID.

MR. LINK: THANK YOU.

EXAMINATION

BY MR. LINK:

Q. OFFICER PAZ, WHEN DID YOU SPEAK TO THE DEFENDANT? WHERE WERE YOU?

A. BACK IN THE JAIL.

Q. OKAY. THE FIRST TIME YOU EVER SPOKE TO THE DEFENDANT, DID YOU READ HIM HIS RIGHTS?

A. YES, I DID.

Q. OFF YOUR PD 145?

A. YES, SIR.

Q. DID HE SEEM TO UNDERSTAND THOSE RIGHTS?

A. YES, HE DID.

Q. DID HE WAIVE THOSE RIGHTS?

A. YES.

Q. AND AFTER HE WAIVED THOSE RIGHTS, DID HE START TALKING TO YOU OR DID YOU ASK HIM QUESTIONS?

A. I ASKED HIM QUESTIONS AND HE TALKED FREELY.

Q. WHAT DID YOU ASK?

A. I ASKED, "DO YOU WANT TO TALK ABOUT WHAT HAPPENED?"
Q. AND HE SAID?
A. HE WENT ON TO MAKE STATEMENTS SAYING, "YES."
Q. WHAT DID HE GO ON TO SAY?
MR. GULLEY: I'M SORRY, YOUR HONOR. I THOUGHT WE COVERED THIS.
THE COURT: I BELIEVE WE HAVE THE FIRST TIME OFFICER PAZ WAS EXAMINED ON THE 402 HEARING. SO MAYBE WE COULD FAST FORWARD TO STATEMENTS REGARDING LITTERING AND GETTING RID OF SOME METAL.
BY MR. LINK:
Q. DID THE DEFENDANT TELL YOU, "THE ONLY THING YOU'RE GOING TO GET ME ON IS LITTERING"?
A. YES, HE DID.
Q. AND HE TOLD YOU THAT AFTER HE WAIVED HIS RIGHTS?
A. YES. IF I COULD ADD SOMETHING?
Q. SURE.
A. THOSE STATEMENTS WERE ACTUALLY MADE AFTER OFFICER CHASE HAD ARRIVED ON SCENE BACK IN THE JAIL. THE DEFENDANT DID NOT WANT TO TALK ANYMORE. HOWEVER, THOSE WERE SPONTANEOUS STATEMENTS MADE AFTER OFFICER CHASE ARRIVED AND WAS IN AND OUT OF THE ROOM.
Q. SO OFFICER CHASE, IF I UNDERSTAND THIS CORRECTLY, WAS GOING IN AND OUT OF THE ROOM?
A. CORRECT.
Q. AND AT THAT POINT, HAD THE DEFENDANT SAID, "I DON'T WANT TO TALK ANYMORE"?
A. AT THAT POINT THE DEFENDANT NO LONGER WANTED TO

TALK FOR WHATEVER REASON. WHEN HE WALKED IN, HE WAS DONE, AND THAT'S WHEN THESE WERE SPONTANEOUS STATEMENTS THAT WERE MADE. AND I PUT THAT IN THE REPORT. I CLARIFIED THAT IN THE REPORT.

Q. THEY WERE MADE WHEN OFFICER CHASE WAS IN OR OUT OF THE ROOM?

A. CORRECT.

Q. SO THOSE TWO STATEMENTS OF, "THE ONLY THING YOU'RE GOING TO GET ME ON IS LITTERING" --

A. "THE ONLY THING YOU'RE GOING TO GET ME ON IS LITTERING." THEN THERE'S A PERIOD. THEN HE WENT ON TO SAY, "I DIDN'T WANT IT. I THREW IT AWAY." AND A THIRD STATEMENT WAS A SHORT TIME LATER, HE WENT ON TO SAY, "ALL I DID WAS THROW AWAY SOME METAL I DID NOT NEED IN MY CAR."

Q. AND THOSE STATEMENTS WERE MADE IN FRONT OF CHASE?

A. WHETHER CHASE WAS THERE OR NOT, I DON'T RECALL. BUT THEY WERE MADE AFTER IT WAS MADE CLEAR TO CHASE THAT HE DIDN'T WANT TO TALK TO HIM ANY LONGER. SO CHASE WAS IN AND OUT OF THE ROOM.

Q. CHASE WAS IN AND OUT OF THE ROOM. WERE YOU STILL ASKING THE DEFENDANT QUESTIONS?

A. NO, I WAS NOT.

Q. THOSE WERE JUST STATEMENTS HE MADE?

A. THOSE WERE JUST STATEMENTS.

MR. LINK: NOTHING FURTHER.

THE COURT: OKAY. MR. GULLEY.

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EXAMINATION

BY MR. GULLEY:

Q. NOW, OFFICER, YOU JUST SAT HERE AND HEARD OFFICER CHASE INDICATE THAT HE HAD DIDN'T HEAR THOSE STATEMENTS, CORRECT?

A. NOT THAT I'M AWARE OF. HE HAS NO RECOLLECTION OF THOSE.

Q. I THINK MY QUESTION WAS, YOU JUST HEARD HIM SAY HE DIDN'T HEAR THOSE STATEMENTS, CORRECT?

A. CORRECT.

Q. NOW, ACCORDING TO YOUR REPORT, MR. CUNNINGHAM MADE THESE STATEMENTS DIRECTLY TO OFFICER CHASE, ACCORDING TO YOUR REPORT?

A. OKAY. WELL, I DON'T RECALL WHETHER OFFICER CHASE WAS IN THE ROOM OR NOT WHEN HE SAID THESE THINGS. THESE ARE THINGS THAT I REMEMBER HEARING.

Q. SO YOUR REPORT MAY BE INACCURATE, THAT'S WHAT YOU'RE TELLING US?

A. NO, MY REPORT SHOULD BE ACCURATE.

Q. THEN ACCORDING TO YOUR REPORT, THE DEFENDANT MADE THESE SPONTANEOUS STATEMENTS DIRECTLY TO OFFICER CHASE, ACCORDING TO YOUR REPORT?

A. ACCORDING TO MY REPORT IT SAYS, "UPON THE ARRIVAL OF OFFICER CHASE." SO UPON THE ARRIVAL. HE WAS IN AND OUT OF THE ROOM.

Q. OKAY. LET'S KEEP READING THIS. "HOWEVER, UPON THE ARRIVAL OF OFFICER CHASE, NUMBER 273, CUNNINGHAM MADE SPONTANEOUS STATEMENTS TO HIM SAYING -- " NOW, ACCORDING TO

YOUR REPORT, HE SPECIFICALLY MADE THESE STATEMENTS, CORRECT?

A. CORRECT.

Q. OFFICER CHASE HAS TESTIFIED HE NEVER HEARD THESE STATEMENTS, CORRECT?

A. OKAY.

MR. GULLEY: THANK YOU. NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. I'LL TELL YOU THE SAME THING I TOLD OFFICER CHASE, AND THAT IS WHATEVER MAY BE ASKED OF YOU, OR HOWEVER YOU MAY INTERPRET THE QUESTION, YOU MAY NOT AND SHALL NOT STATE TO THIS JURY THAT THE DEFENDANT AT ANY POINT REFUSED TO KEEP TALKING, INVOKED HIS RIGHT TO REMAIN SILENT, OR SAID HE DIDN'T WANT TO TALK TO SOMEBODY.

THE WITNESS: OKAY.

THE COURT: IF COUNSEL ASKS YOU ABOUT SPONTANEOUS STATEMENTS THAT YOU HEARD THE DEFENDANT MAKE, WHETHER OR NOT CHASE WAS PRESENT, THEN YOU'RE FREE TO SAY WHAT IT WAS THAT YOU HEARD HIM SAY.

THE WITNESS: OKAY.

THE COURT: BUT WE NEED TO -- IT IS IMPROPER, ILLEGAL, AND GROUNDS FOR A MISTRIAL, IN MANY CASES, IF IT IS IMPARTED TO A JURY THAT A DEFENDANT HAS WAIVED -- HAS DEMANDED HIS RIGHT TO REMAIN SILENT. SO WE CAN'T HAVE THAT.

THE WITNESS: OKAY.

THE COURT: OKAY. AND I'M GOING TO ASK BOTH COUNSEL NOT TO ASK ANY QUESTIONS THAT MIGHT ELICIT THAT KIND OF RESPONSE.

MR. LINK: BUT JUST TO CLARIFY, I CAN GO OVER THE

INITIAL MIRANDA WARNINGS AGAIN?

THE COURT: YOU CAN AND SHOULD TO CLEAR IT UP OF WHERE WE LEFT IT HANGING WITH THE JURY.

MR. LINK: OKAY.

THE COURT: WE'VE STILL GOT MR. BLOOMFIELD WAITING OUT THERE I SUSPECT. WOULD YOU RUN OUT THERE REAL QUICK AND GET HIM IN HERE FOR ME.

MR. LINK: YES, YOUR HONOR.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF WITNESS WILLIAM BLOOMFIELD:)

THE COURT: MR. BLOOMFIELD --

THE WITNESS: YES, SIR.

THE COURT: COME RIGHT UP HERE, SIR. THE ONLY REASON I ASKED YOU TO STAY, WE HAD A LITTLE -- I WAS -- WHAT TIME WERE YOU ASKED TO BE HERE TODAY?

THE WITNESS: WHAT TIME WAS I ASKED TO BE HERE?

THE COURT: WHAT TIME WERE YOU SUPPOSED TO BE HERE?

THE WITNESS: LIKE 1 O'CLOCK.

THE COURT: OKAY. WHAT TIME DID YOU GET HERE?

THE WITNESS: I GOT HERE LIKE ABOUT 1:15, 1:25.

THE COURT: OKAY. WHERE DID YOU GO, BECAUSE I DIDN'T SEE YOU. YOU DIDN'T COME IN HERE UNTIL ABOUT 1:35.

THE WITNESS: THAT'S WHEN THEY CALLED ME OUTSIDE, SIR.

THE COURT: OKAY.

THE WITNESS: I WAS SITTING OUTSIDE.

THE COURT: YOU WERE SITTING OUTSIDE OF THE COURTROOM HERE?

THE WITNESS: YES.

THE COURT: OKAY. WELL, WE WERE LOOKING FOR YOU FROM ABOUT 1:15 UNTIL 1:35, AND NOBODY SEEMED TO KNOW WHERE YOU WERE, AND I JUST WANTED TO FIND OUT WHAT TIME YOU GOT HERE AND WHERE YOU WERE.

THE WITNESS: OKAY. I LEAVE MY HOUSE LIKE ABOUT WHEN THEY CALLED ME. IT WAS SOME TIME AFTER 12 O'CLOCK, ABOUT 12:30, OR SOMETHING LIKE THAT. AND I CAME HERE -- LET ME SEE. I GOT HERE LIKE ABOUT 1:25, SOMETHING LIKE THAT.

THE COURT: ABOUT 1:25?

THE WITNESS: YEAH, I CAME.

THE COURT: SO YOU WERE A LITTLE LATE?

THE WITNESS: YES, SIR. I WAS A LITTLE LATE.

THE COURT: WELL, WE HAD ABOUT 20 PEOPLE IN HERE WAITING FOR 20 MINUTES. WE COULDN'T DO ANYTHING UNTIL YOU SHOWED UP. SO I JUST WANTED TO FIND OUT WHAT THE SITUATION WAS.

THE WITNESS: YES, SIR.

THE COURT: ALL RIGHT. YOU'RE FREE TO GO SUBJECT TO RECALL. THANK YOU. GOODBYE.

THE WITNESS: YES.

THE COURT: ALL RIGHT. WE'LL BE IN RECESS UNTIL ABOUT 2:45.

(RECESS.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY:)

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD ON PEOPLE VERSUS CUNNINGHAM. ALL NECESSARY PARTIES ARE PRESENT.

OFFICER PAZ IS BACK ON THE WITNESS STAND STILL UNDER OATH. AND, MR. LINK, YOU MAY RESUME YOUR EXAMINATION.

MR. LINK: THANK YOU, YOUR HONOR.

BY MR. LINK:

Q. OFFICER PAZ, I'M HOLDING ANOTHER TAPE. IT'S BEEN MARKED PEOPLE'S 9. I'VE SHOWN IT TO DEFENSE COUNSEL. I BELIEVE ALL THREE OF US HAVE SEEN IT ON VIDEO. IS THIS TAPE FROM YOUR CAR, THE ANGLE FROM YOUR CAR?

A. YES, SIR.

Q. AND IT TAPES ESSENTIALLY THE SAME THING?

A. YES, SIR.

Q. NOW, LET'S TALK ABOUT YOU SPEAKING WITH THE DEFENDANT. WHERE DID THAT TAKE PLACE?

A. AT THE EL CAJON POLICE DEPARTMENT, OR OUR JAIL.

Q. DID YOU HAVE AN OPPORTUNITY TO READ HIM HIS RIGHTS?

A. YES, SIR.

Q. HOW DO YOU GO ABOUT READING SOMEBODY THEIR RIGHTS?

A. I READ IT VERBATIM FROM MY MIRANDA CARD, WHICH IS ON MY PD NOTEPAD.

Q. DO YOU HAVE THAT WITH YOU?

A. YES, SIR.

Q. COULD YOU PLEASE PULL IT OUT. THANK YOU. AND GO AHEAD AND READ THOSE RIGHTS AS THEY'RE WRITTEN ON YOUR CARD. IS THAT HOW YOU DID IT THAT NIGHT?

A. YES, SIR.

Q. GO AHEAD AND READ THEM.

A. "YOU HAVE THE RIGHT TO REMAIN SILENT.

IF YOU GIVE UP THE RIGHT TO REMAIN SILENT, ANYTHING YOU

DO SAY CAN AND WILL BE USED IN COURT AGAINST YOU.

YOU HAVE THE RIGHT TO SPEAK WITH AN ATTORNEY OF YOUR CHOICE BEFORE QUESTIONING, AND TO HAVE THE ATTORNEY PRESENT DURING QUESTIONING.

IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE APPOINTED FOR YOU BY THE COURT PRIOR TO ANY QUESTIONING, IF YOU SO DESIRE. THE ATTORNEY WILL NOT COST YOU ANYTHING, THE SERVICES ARE FREE.

DO YOU UNDERSTAND EACH OF THESE RIGHTS THAT I HAVE EXPLAINED TO YOU?"

Q. AND WHEN YOU ASKED THAT LAST QUESTION, HOW DID HE RESPOND?

A. YES, AND THEN WITH A STATEMENT.

Q. AND THEN WHAT?

A. HE GAVE A STATEMENT.

Q. OKAY. DID HE SEEM TO UNDERSTAND THOSE RIGHTS YOU READ TO HIM?

A. YES.

Q. WHAT DID HE SAY TO YOU?

A. MAY I READ VERBATIM FROM THE NOTES?

Q. DID YOU WRITE A REPORT IN THIS CASE?

A. YES, I DID.

Q. AND DID YOU PREPARE THAT REPORT FOR IT'S TRUTH AND ACCURACY?

A. YES, I DID.

Q. AND DO YOU HAVE THAT REPORT IN FRONT OF YOU?

A. I DO.

Q. PLEASE REFER TO IT.

A. AFTER MIRANDIZING CUNNINGHAM WITH MY PD MIRANDA CARD, HE SAID, COMMA, QUOTE, "YES," THAT HE UNDERSTOOD HIS RIGHTS. WHEN ASKED IF HE WANTED TO TELL ME WHAT HAPPENED HE SAID COMMA, QUOTE, "I SAID DON'T FUCK WITH ME TO THE PEOPLE PERIOD," UNQUOTE. HE THEN WENT ON TO SAY, COMMA, QUOTE, "I SAID LEAVE ME ALONE TO FOUR OR FIVE PEOPLE, COMMA, WHO WERE TALKING CRAZY PERIOD," UNQUOTE.

Q. OKAY. DID HE SAY ANYTHING ELSE TO YOU, JUST THE STATEMENTS?

A. "THEY WERE THE SAME PEOPLE," AND I QUOTE, "THAT TOOK MY CELL PHONE," UNQUOTE.

Q. OKAY. AND DID HE MAKE TWO OTHER STATEMENTS?

A. HE DID.

Q. WHAT WERE THEY?

A. THE ONLY THING YOU'RE GOING TO GET -- THE ONLY THING YOU'RE GOING TO GET ME ON IS LITTERING." AND ALSO, "I DIDN'T WANT IT. I THRE IT AWAY." AND THEN THE LAST STATEMENT WAS, "ALL I DID WAS THROW AWAY SOME METAL I DIDN'T NEED IN MY CAR."

MR. LINK: THANK YOU VERY MUCH. NOTHING FURTHER.

THE COURT: MR. GULLEY, CROSS-EXAMINATION.

CROSS-EXAMINATION

BY MR. GULLEY:

Q. WHERE WAS THIS DONE AT?

A. THIS WAS DONE AT THE EL CAJON POLICE DEPARTMENT IN THE JAIL.

Q. NOW, WHERE IS THE EL CAJON POLICE DEPARTMENT?

A. 100 FLETCHER PARKWAY.

Q. IS THAT A NEW BUILDING, OLD BUILDING?
A. THAT'S AN OLD BUILDING, SIR.
Q. DO YOU HAVE NEW, OLD EQUIPMENT IN THERE?
A. YES, WE DID. OLD.
Q. DO YOU HAVE TAPE RECORDERS?
A. NO, SIR.
Q. NO TAPE RECORDERS IN THERE.
A. NO, SIR.
Q. DO YOU OWN ONE?
A. EXCUSE ME.
Q. DO YOU OWN YOUR OWN PERSONAL ONE?
A. I DO, BUT IT'S FOR DICTATING.
Q. OKAY. COULD YOU HAVE USED IT THAT NIGHT IF YOU WANTED TO?
MR. LINK: OBJECTION. RELEVANCE.
THE COURT: OVERRULED. YOU CAN ANSWER.
THE WITNESS: I SUPPOSE, YES, I COULD HAVE.
BY MR. GULLEY:
Q. OKAY. SO I TAKE IT THEN THERE WAS NO TAPE RECORDING OF ANY COMMENTS HE MADE, CORRECT?
A. NO, SIR.
Q. THERE'S NO VIDEOTAPES OF ANY COMMENTS HE MADE, CORRECT?
A. THERE IS A CAMERA WHICH I BELIEVE THE DESK OFFICER CAN VIEW JUST TO MAKE SURE THAT THERE'S NO PROBLEMS BACK THERE.
Q. OKAY.
A. I DON'T KNOW IF THAT'S RECORDED OR NOT.

Q. BUT YOU YOURSELF DIDN'T BRING IN THE VIDEO RECORDER?

A. NO, SIR.

Q. SO THE ONLY THING YOU'RE GOING ON IS WHAT YOU WROTE DOWN AT THE TIME?

A. YES, SIR.

Q. AND YOUR MEMORY?

A. YES, SIR.

Q. WHAT WAS THE EXACT TIME THAT YOU RECEIVED THE CALL?

A. THE EXACT TIME THAT THE CALL CAME OUT, I BELIEVE, WAS 10:58.

Q. OKAY. AND IN TERMS OF DISTANCE, HOW FAR WAS THE COMPLEX FROM WHERE YOU WERE LOCATED?

A. WHEN I INITIALLY HEARD THE CALL COME OUT OVER THE RADIO, I WOULD SAY ABOUT THREE QUARTERS OF A MILE. I WAS AT THE 900 BLOCK OF BROADWAY.

Q. IN TERMS OF TIME, HOW FAR AWAY WERE YOU?

A. DEPENDING ON STOP LIGHTS, A MINUTE OR LESS.

Q. OKAY. AND SO IT WAS LESS THAN A MINUTE FROM THE TIME OF THE CALL WHEN YOU SAW HIS VEHICLE; IS THAT CORRECT?

A. CORRECT.

Q. WHEN I SAY "HE," I MEAN THE DEFENDANT, MR. CUNNINGHAM?

A. CORRECT.

Q. AND I'M WHAT CONFUSED. WERE YOU -- WAS HE COMING TOWARDS YOU, BEHIND YOU, IN FRONT OF YOU? I'M CONFUSED AS TO HOW YOU SAW HIM.

A. MY CAR WAS POINTING DIRECTLY SOUTH. HIS CAR WAS

PASSING HEADING NORTH.

Q. OKAY. SO HE ACTUALLY DROVE PAST YOU?

A. WENT RIGHT BY ME, CORRECT.

Q. AND I ASSUME HE WAS GOING THE SPEED LIMIT AT THAT TIME?

A. I COULDN'T TELL FROM MY POSITION.

Q. YOU IMMEDIATELY U-TURNED, CORRECT?

A. I DID.

Q. YOUR LIGHTS AND SIREN WERE NOT ON AT THIS TIME, CORRECT?

A. PRIOR TO DOING A U-TURN, I ACTIVATED MY LIGHTS AND SIREN SO I COULD MAKE A U-TURN.

Q. SO YOU ACTIVATED THEM TO STOP THE TRAFFIC?

A. SO I COULD MAKE THE U-TURN WITHOUT GETTING HIT.

Q. OKAY. I'M SOMEWHAT CONFUSED ON YOUR CAMERAS. ARE THEY NOT ACTIVATED WHEN YOU TURN ON YOUR LIGHTS AND SIREN?

A. THEY ARE ACTIVATED WHEN YOU TURN ON THE OVERHEAD LIGHTS. HOWEVER, IT USUALLY TAKES ABOUT TWO TO THREE SECONDS BEFORE IT WILL ACTUALLY GET THE TAPE ROLLING AND ACTUALLY START THE IMAGE.

Q. OKAY. ALL RIGHT. LET ME GET THIS RIGHT. YOU SEE THE CAR, MR. CUNNINGHAM'S VEHICLE, GO BY YOU. YOU THEN TURN ON YOUR LIGHTS AND SIREN, OR JUST YOUR LIGHTS?

A. LIGHTS AND SIREN.

Q. OKAY. YOU TURN THEM ON TO MAKE A U-TURN, YES?

A. YES, SIR.

Q. OKAY. IT TAKES YOU, WHAT, TWO OR THREE SECONDS TO MAKE THE U-TURN?

A. I HAD TO WAIT FOR SERGEANT ZMIJEWSKI WHO WAS IN THE NUMBER 1 LANE. I WAS IN THE NUMBER 2 LANE. SO HE HAD TO PROCEED FIRST BEFORE I COULD DO IT.

Q. OKAY. SO YOU MAKE YOUR U-TURN. AND AT THIS TIME, THE CAMERA IS JUST ABOUT STARTING; IS THAT CORRECT?

A. YES, SIR.

Q. ALL RIGHT. NOW, JUST TO KEEP TRACK OF THE TIMING, WHEN DID HE RUN THE LIGHT, THE LIGHT IN THIS SITUATION?

A. AS FAR AS THE EXACT TIME?

Q. YEAH. DO YOU UNDERSTAND MY QUESTION?

A. I DO.

Q. OKAY.

A. IT WOULD PROBABLY BE ABOUT ONE MINUTE, MAYBE TWO MINUTES, FROM THE TIME I HEARD THE INITIAL RADIO CALL. MAYBE ABOUT ONE MINUTE.

Q. OKAY. NOW, YOU WERE STILL FACING HIM WHEN HE RAN THE LIGHT?

A. WHEN HE WENT BY ME, OBVIOUSLY WE WERE OPPOSITE DIRECTIONS. AS I STARTED TO DO THE U-TURN, HE HAD ALREADY BLOWN THROUGH THE LIGHT BECAUSE I COULD SEE THAT IT WAS RED.

Q. YOU COULD SEE IT FROM YOUR REARVIEW?

A. YES, YOU COULD TURN AROUND AND SEE THAT IT WAS RED.

Q. OKAY. SO YOU WERE DRIVING ONE WAY, HE'S COMING THE OTHER?

A. CORRECT.

Q. AS HE DRIVES BY YOU, YOU NOTICE THAT THIS IS THE VEHICLE YOU MAY BE LOOKING FOR?

A. CORRECT.